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STUDY OF

MSPB APPEALS DECISIONS

FOR FY 1983

ORIGINAL

SEPTEMBER 1985

A REPORT OF THE U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

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MERIT PRINCIPLES GOVERNING THE FEDERAL PERSONNEL SYSTEM

The Civil Service Reform Act (Pub. L. No. 95-454, 92 Stat. 111 (1978)) requires that Federal personnel management be implemented consistent with the following merit principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be --

(a) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(b) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences --

(a) a violation of any law, rule, or regulation, or

(b) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

It is a prohibited personnel practice to take or fail to take any personnel action when taking or failing to take the action results in the violation of any law, rule or regulation implementing or directly concerning these merit principles.

The Merit Systems Protection Board is directed by law to conduct special studies of the civil service and other Federal merit systems to determine whether these statutory mandates are being met, and to report to the Congress and the President on whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.

These studies, of which this report is one, are conducted by the Office of Merit Systems Review and Studies.

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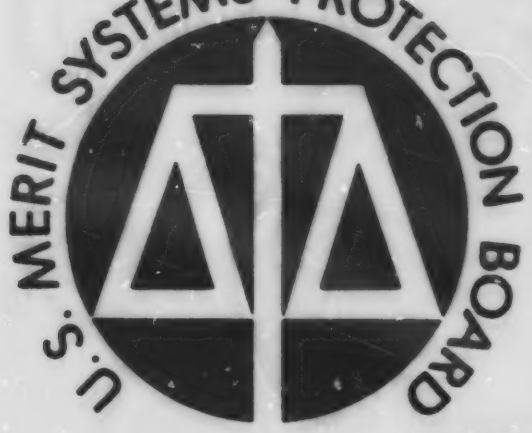
STUDY OF MSPB APPEALS DECISIONS FOR FY 1983



SEPTEMBER 1985

A REPORT OF THE U.S. MERIT SYSTEMS PROTECTION BOARD
OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

U.S. MERIT SYSTEMS PROTECTION BOARD

Herbert E. Ellingwood, Chairman
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THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

September 1985

Sirs:

In accordance with section 202(a) of the Civil Service Reform Act of 1978 (5 U.S.C. section 1205 (a)(3)), it is my honor to submit the fourth annual report of the MSPB Appeals Decisions for Fiscal Year 1983.

This report covers the appeals decisions by the Merit Systems Protection Board during Fiscal Year 1983.

Respectfully,

Herbert E. Ellingwood

The President of the United States
The President of the Senate
The Speaker of the House of Representatives

Washington, D.C.

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CHAPTER 1

INTRODUCTION AND OVERVIEW

A. PURPOSE OF THE STUDY

The principal function of the Merit Systems Protection Board (MSPB) is to hear and decide the appeals of Federal employees from Government agency personnel actions. This study, prepared by MSPB's Office of Merit Systems Review and Studies (MSRS), analyzes the Regional Office and Board level decisions on those appeals for fiscal year (FY) 1983. This is the fourth such study MSPB has published. The information generated thereby is intended to be of use to the President, the Congress, Government agencies, and public interest groups and other interested parties.

B. THE APPEALS PROCEDURE[1]

The appeals process begins when an employee[2] files an appeal from an agency personnel action with one of MSPB's 11 Regional Offices.[3] The case is then assigned to a presiding official (one of MSPB's attorney-examiners) in the Regional Office. Not all Federal employees have the right to appeal to MSPB, and not all agency actions may be appealed. Also, there are time limits within which appeals may be filed. Consequently, some appeals are dismissed for lack of subject matter jurisdiction[4] or timeliness. For the purposes of this report, such cases are said to have been rejected without a finding on the merits.[5]

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[1]This description of MSPB's appellate procedure is provided as background and should not be taken as an authoritative statement for legal purposes. A more detailed exposition is found in Title 5, United States Code, and Title 5, United States Code of Federal Regulations, or in the Board's pamphlet titled "Appeal Rights and Procedures."

[2]Although the vast majority of appeals and Petitions for Review are filed by current employees, some appeals are filed by applicants for employment (suitability cases), former employees (retirement cases), and, sometimes, relatives of employees (usually legal retirement cases).

[3]A listing of MSPB's 11 Regional Offices and their jurisdictional alignments during FY 1983 can be found in Appendix 3 of this report.

[4]MSPB's appellate jurisdiction is confined to those cases, specified in Appendix 4, where actions within an agency have been taken.

[5]MSPB's recordkeeping mechanisms do not presently allow one to distinguish rejections for lack of jurisdiction from rejections for timeliness. Consequently, such dismissals are discussed only in the aggregate.

If an appeal passes the jurisdiction and timeliness tests, the presiding official in the Regional Office decides the appeal on the merits and issues an initial decision. Unless waived by the appellant, a hearing will be held prior to the issuance of the initial decision. The Civil Service Reform Act of 1978 provides for a hearing on every appeal within MSPB's jurisdiction.

The initial decision becomes the final decision of MSPB 35 days after its issuance if a Petition for Review (PFR) has not been filed, and the case is then said to be closed. However, before the 35 day period expires, either the agency or the appellant may request a Board level review if either is dissatisfied with the decision. The filing of a Petition for Review with the board will stop the decision from becoming effective until the Board takes action upon the case. Any party to the proceeding, the Director of the Office of Personnel Management (OPM), or the Special Counsel may request review, or the Board itself may reopen and reconsider the case. This reopening process will also stop the decision from becoming final until the Board takes action on it. If a PFR has been filed or the Board reopens and reconsiders a case, the decision of the Board will be the final administrative decision. The Board considers and decides all PFR's filed. A PFR is granted most commonly in order to reverse the Regional Office decision or to address an issue and offer guidance on it. Once the decision is final, it may be appealed to the United States Court of Appeals for the Federal Circuit. However, mixed cases, i.e., those in which issues of discrimination are raised, may be appealed to a U.S. District Court or to the Equal Employment Opportunity Commission.

C. NOTE ON THE DATA

The data used for this report were extracted from the Board's Case Tracking System, a computerized data base management system, for fiscal year 1983. Where feasible, we have included the corresponding figures for FY 1982 (contained in the FY 1982 report[6]) to illustrate changes which may have occurred from FY 1982 to FY 1983. For the convenience of the reader, a glossary defining the types of cases and other terms as used in this report can be found in Appendix 5.

All references to Air Traffic Controller (ATC) decisions or PFR's in this report represent the number (or percent) of PFR's which were finally decided, either individually or as part of a consolidation, by the Board in FY 1983. The MSRS study team necessarily made certain assumptions relative to the interpretation of data for ATC appeals in which PFR's were filed with the Board. Where ATC PFR's were consolidated by the Board for purposes of issuing a decision on a PFR,[7] the Board issued a decision under the name of one of the appellants (identified for case tracking purposes as the "lead case") and included the other appellants in the consolidation as "secondaries." The decision outcome for the "lead case" only was entered into the Case Tracking System, and no entries regarding decision outcomes were made for the "secondaries." In order to analyze this data, it was therefore necessary to

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[6]U.S. Merit Systems Protection Board, Office of Merit Systems Review and Studies, Study of MSPB Appeals Decisions for FY 1982, December 1983.

[7]Numerous PFR's were consolidated by the Board for convenience in processing so that individual petitions could be more expeditiously adjudicated without adversely affecting any party.

construct a separate database which assumed the decisions for the "secondaries" were identical to those of their respective "leads" (we estimate this assumption introduced a maximum error of less than 2 percent.)

D. BACKGROUND AND SUMMARY

During the summer of 1981, the union representing the Air Traffic Controllers authorized a strike for all its unit members. Controllers who failed to obey back to work orders were consequently removed from their positions by the Federal Aviation Administration. The result was that MSPB was deluged by over 11,000 appeals from controllers who had been removed from their positions. MSPB was thus confronted with processing these appeals in addition to its normal workload. The Regional Offices met this challenge and decided 10,802 of the ATC appeals during FY 1983. Additionally, the number of ATC hearings held rose from 136 in FY 1982 to 5,554 in FY 1983. The Regional Offices also closed 51 percent more non-ATC appeals (8,076 vs. 5,362) and held 78 percent more hearings (2,824 vs. 1,589) in FY 1983 than in FY 1982. The Board responded in like fashion by deciding PFR's covering 2,965 former Air Traffic Controllers in FY 1983, raising the total number of ATC and non-ATC PFR's decided (3,881) to over three times the FY 1982 level (1,192).[8]

More decisions by the Regional Offices were on the merits in FY 1983 (93% of ATC and 50% of non-ATC appeals decisions) than in FY 1982 (26% of ATC and 47% of non-ATC appeals decisions). Furthermore, those non-ATC appeals resulted in more decisions that were favorable to the employees (i.e., the appealed agency action was reversed or mitigated by the Regional Office—27% in FY 1983 vs. 24% in FY 1982). Far fewer of these favorable decisions were the result of harmful procedural error[9] on the part of the agencies in FY 1983 than in FY 1982 (only 8% of all reversals for non-ATC appeals in FY 1983 vs. 27% in FY 1982).

The increased workload in the Regional Offices resulted in increases in the average time required to process both ATC and non-ATC appeals (7.56 months in FY 1982 to 15.18 months in FY 1983 for ATC appeals and 3.60 months in FY 1982 to 6.64 months in FY 1983 for non-ATC appeals).

Appeals for agency actions based on employee performance began to form a more significant portion of the Regional Offices' caseloads beginning in FY 1983. Performance plans developed in response to the Civil Service Reform Act had been completed by the beginning of FY 1983. Consequently, in retrospect the agencies appeared to be in a better position to take performance-based actions against those employees who had demonstrated unsatisfactory performance. As a result, the number of appeals for removals based solely

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[8]No ATC PFR's were decided by the Board in FY 1982. Although over 5,000 appellants originally petitioned the Board in FY 1983, a number of them subsequently withdrew their petitions before they could be adjudicated by the Board. Final action on other PFR's was not taken until FY 1984. For these reasons, a total of only 2,965 individuals are listed in this report as having received final Board decisions in FY 1983.

[9]Harmful procedural error occurs when an agency fails to apply approved procedures which could have brought about a different decision than the one reached by the agency.

on employee performance (under Part 432 of Title 5 of the Code of Federal Regulations) increased markedly (rising from 36 in FY 1982 to 207 in FY 1983).[10]

The number of non-ATC PFR's decided dropped by 23 percent in FY 1983 (from 1,192 to 916), while 2,965 ATC PFR's were decided. The net result was that the Board decided over three times as many PFR's in FY 1983 (3,881) as in FY 1982 (1,192). The average time to complete an ATC PFR for appeals decided in FY 1983 was about 6 months, while the average time required to decide the non-ATC PFR's was virtually unchanged from FY 1982 to FY 1983 (remaining at slightly more than 10-1/2 months).

There was an increase in the proportion of non-ATC Regional Office initial decisions affirmed by the Board -- 88 percent in FY 1983 compared with 80 percent in FY 1982. Most (835 of 916) of the PFR's decided by the Board were requested by employees. Eighty out of 835 (10%) employee requests and 26 out of 80 (33%) agency requests for PFR's in non-ATC appeals resulted in the Regional Office decision being overturned.[11]

In sum, both the Board and the Regional Offices were significantly affected in FY 1983 by the continuing legacy of the 1981 Air Traffic Controller strike. The completion of most of the ATC appeals decisions and the substantial reduction in the backlog of non-ATC appeals caused by the ATC phenomenon resulted in a "normalization" of MSPB operations and case processing activities in FY 1984.[12]

E. SIGNIFICANT FINDINGS

This report describes what happened at MSPB during FY 1983 by focusing separately on Regional Office and Board decisions. Based on an analysis of data on appeals to MSPB during fiscal year 1983, and where feasible, the corresponding figures for fiscal year 1982, the significant findings are as follows:

Regional Office Findings

- The total number of appeals of all types, both ATC and non-ATC, decided by the Regional Offices rose dramatically from FY 1982 to FY 1983 -- increasing from 5,920 to 18,878. All of the remaining ATC appeals (10,802) were decided by the Regional Offices in FY 1983 (558

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[10]Data for FY 1984 indicate that the number of performance-based appeals has continued to increase.

[11]In the text of this report, a Regional Office decision is considered to have been overturned when the Board grants the PFR and reverses, remands, mitigates, or vacates the decision.

[12]This will be discussed in greater detail in the Study of MSPB Appeals Decisions for FY 1984, tentatively scheduled for release in the fall of 1985.

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ATC appeals were decided in FY 1982).[13] There was a 51 percent increase (from 5,362 to 8,076) between FY 1982 and FY 1983 in the total number of non-ATC appeals decided by the Regional Offices.

- The number of non-ATC appeals from agency actions based solely on performance[14] rose from 36 in FY 1982 to 207 in FY 1983.

- The Regional Offices held hearings in 5,554 ATC appeals decided in FY 1983.[15] Ninety-nine percent of these hearings dealt with appeals which were decided on the merits.

- The Regional Offices also held hearings on 2,824 non-ATC appeals decided in FY 1983, an increase of 1,235 (78%) over FY 1982. The percentage of non-ATC appeals for which hearings were held rose from 30 percent in FY 1982 to 35 percent in FY 1983.

- The percentage of ATC appeals decisions by the Regional Offices which were based on the merits of the cases increased from 26 percent in FY 1982 (143 of 558 appeals decisions) to 93 percent in FY 1983 (10,057 of 10,802 appeals decisions). Three percent of these decisions in FY 1983 (271 of 10,057) reversed or mitigated the agency action.

- Of the 8,076 non-ATC appeals decided by the Regional Offices in FY 1983, 86 percent left the agency action effectively unchanged. The comparable figure for FY 1982 was 89 percent.

- The Regional Offices reversed or mitigated more agency actions for non-ATC appeals decided on the merits in FY 1983 than in FY 1982 (27% vs. 24%).

- Of the 1,007 Regional Office reversals of agency actions on the merits for non-ATC appeals in FY 1983, only 8 percent were for harmful procedural error. The comparable figure for FY 1982 was 27 percent.

- The extremely large number of ATC appeals decided by the Regional Offices in FY 1983 caused the average processing time to arrive at initial decisions in ATC appeals to rise from 7.56 months in FY 1982 to 15.18 months in FY 1983.

---

[13]The total number of 11,360 ATC appeals decided (558 in FY 1982 and 10,802 in FY 1983) is higher than the earlier figures reported by the Board. This may be due in part to a coding error which resulted in the double counting of some appeals which were entered into the Case Tracking System as having more than one closing action.

[14]Under Part 432 of Title 5 of the Code of Federal Regulations.

[15]Some of the hearings dealt with appeals with the same or similar issues which were consolidated for hearing purposes. Other hearings were held jointly at various controller work sites for convenience of administration. Consequently, the actual number of ATC appellants who had hearings is appreciably higher than 5,554.

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- As the impact of the ATC cases was felt, the average time to decide a non-ATC appeal at the Regional Offices also rose from 3.60 months in FY 1982 to 6.64 months in FY 1983.

Board Findings

- The total number of PFR's decided by the Board increased substantially from FY 1982 to FY 1983--rising from 1,192 to 3,881. This included PFR's covering 2,965 Air Traffic Controllers and 916 non-ATC PFR's. The number of non-ATC PFR's decided dropped 23 percent (from 1,192 to 916) from FY 1982 to FY 1983. [The Board did not decide any ATC PFR's in FY 1982.]

- The majority (2,515 of 2,965) of the ATC PFR's decided by the Board in FY 1983 were requested by employees. The remaining PFR's were split between agency requests and requests by both agencies and employees. The bulk of the non-ATC PFR's were also requested by employees (835 of 916) and virtually all of the remainder by agencies.

- In FY 1983 the Board granted[16] 28 percent (832 of 2,965) of all the ATC PFR's decided. The Board also granted 19 percent (171 of 916) of all the non-ATC PFR's decided.

- The Board overturned proportionately fewer non-ATC Regional Office decisions in FY 1983 than in FY 1982. Of the 916 non-ATC PFR's decided in FY 1983, 106 (12%) of the PFR's requested by any party resulted in the Regional Office decision being overturned, down from 20 percent (238 out of 1,192) in FY 1982. In other words, the Board affirmed 88 percent of the Regional Office decisions in FY 1983 compared to 80 percent in FY 1982.

- Of the 171 non-ATC PFR's granted in FY 1983, 106 (62%) of the PFR's granted to any party resulted in Regional Offices' decisions being overturned, down from 89 percent (238 out of 268) in FY 1982.

- In FY 1983, 80 (10%) of the 835 non-ATC PFR's requested by employees resulted in the Regional Office decision being overturned. The comparable figure for agency requests was 26 out of 80 (33%).

- For non-ATC PFR's that were granted, the Board more frequently overturned Regional Office decisions for PFR's requested by employees than for those requested by agencies. The Board overturned 80 out of 113 (71%) of the Regional Office decisions for non-ATC employee PFR's granted compared to 26 out of 58 (45%) for non-ATC agency PFR's granted.

- Ninety percent (748 of 832) of the ATC PFR's granted ended in final decisions whereby the Federal Aviation Administration prevailed and removals of the employees remained in force.

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[16] A decision by the Board to reopen a case.

- The average time to process an ATC PFR for cases decided in FY 1983 was 6 months. The average time to decide a non-ATC PFR was virtually unchanged from FY 1982 to FY 1983 (10.63 months vs. 10.61 months). Forty-three percent of the non-ATC PFR's were decided in seven months or less, up from 33 percent in FY 1982.

F. OVERVIEW OF REPORT

The remainder of the report consists of two chapters, followed by appendixes. A brief overview of the chapters follows.

Chapter 2: The Regional Offices

This chapter examines: the numbers and types of appeals decided; the numbers of hearings held; the outcomes of the appeals decided; appeal decision times; agency standings; and appellant demographic characteristics, such as pay plan, veteran status, sex, grade level within pay plan, and age.

Chapter 3: The Board

This chapter looks at: the number of PFR's decided; who requested the reviews; the number of PFR's granted; the proportion of Regional Office decisions remaining unchanged compared to the number that were overturned; the relative success rates of employees and agencies; and the length of time it took to decide appeals.

CHAPTER 2

THE REGIONAL OFFICES

A. INTRODUCTION

As noted previously, the Regional Office constitutes the first station in the appeals process. It is here that a presiding official is assigned the appeal, decides the appeal, and issues an initial decision. If the appeal is determined to be outside the MSPB's jurisdiction or if it is untimely filed, the initial decision will be to reject (dismiss) the appeal without a finding on the merits. If the appeal goes forward, it is said to be decided on the merits.

A hearing is held prior to the issuance of an initial decision. Whether a hearing is held or not, the appeal is usually decided at the Regional Office within the Board's 120-day deadline. The initial decision becomes final unless a Petition for Review is filed within 35 days. However, most appeals do not proceed beyond the Regional Office level.

The FY 1983 appeal processing activities of the Regional Offices continued to be significantly affected by certain temporary fiscal measures adopted by the Board in FY 1982. Those measures included the cessation of all hearing activities for approximately two months, a total ban on travel by presiding officials for approximately seven months, and the furlough of all Board employees for limited periods in July 1982. These measures were necessitated by reductions in the Board's FY 1982 budget (4% in October 1981 and an additional 12% reduction in December 1981) and reflected the impact on the Board's limited resources caused by the unprecedented number of appeals received—over 11,000 appeals from former Air Traffic Controllers (ATC) removed from their positions following the 1981 strike.

In mid-July of 1982, the Board received a supplemental appropriation which allowed it to rescind the earlier hearing and travel restrictions. Nevertheless, by the beginning of FY 1983, the Regional Offices had amassed a large backlog of cases, comprised mainly of appeals (both ATC and non-ATC) in which hearings requiring travel outside Regional Office cities had been requested. The Regional Offices responded by developing a plan which allowed them to systematically decrease the backlog, while continuing to process incoming appeals and to issue quality decisions on a timely basis.

Major Findings

Based on an analysis of data on appeals processed at the Regional Offices during fiscal year 1983, and where feasible, the corresponding figures for fiscal year 1982, the major findings are as follows:[1]

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[1]The data used for this report were extracted from the Board's Case Tracking System, a computerized data base management system.

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- The total number of appeals of all types, both ATC and non-ATC, decided by the Regional Offices rose dramatically from FY 1982 to FY 1983 -- increasing from 5,920 to 18,878. All of the remaining ATC appeals (10,802) were decided by the Regional Offices in FY 1983 (558 ATC appeals were decided in FY 1982). There was a 51 percent increase (from 5,362 to 8,076) between FY 1982 and FY 1983 in the total number of non-ATC appeals decided by the Regional Offices.

- The composition of the Regional Offices' non-ATC caseloads shifted from FY 1982 to FY 1983, with downturns in adverse action (2 percentage points) and reduction-in-force appeals (7 percentage points) and an increase (9 percentage points) in disability retirement appeals.

- The number of non-ATC appeals from agency actions based solely on performance rose from 36 in FY 1982 to 207 in FY 1983.

- The Regional Offices held hearings in 5,554 ATC appeals decided in FY 1983. Ninety-nine percent of these hearings dealt with appeals which were decided on the merits.

- The Regional Offices also held hearings on 2,824 non-ATC appeals decided in FY 1983, an increase of 1,235 (78%) over FY 1982. The percentage of non-ATC appeals for which hearings were held rose from 30 percent in FY 1982 to 35 percent in FY 1983.

- The percentage of ATC appeals decisions by the Regional Offices which were based on the merits of the cases increased from 26 percent in FY 1982 (143 of 558 appeals decisions) to 93 percent in FY 1983 (10,057 of 10,802 appeals decisions). Three percent of these decisions in FY 1983 (271 of 10,057) reversed or mitigated the agency action.

- A slightly greater percentage of non-ATC appeals were decided by the Regional Offices on the merits in FY 1983 than in FY 1982 (50% vs. 47%).

- Of the 8,076 non-ATC appeals decided by the Regional Offices in FY 1983, 86 percent left the agency action effectively unchanged. The comparable figure for FY 1982 was 89 percent.

- The Regional Offices reversed or mitigated more agency actions for non-ATC appeals decided on the merits in FY 1983 than in FY 1982 (27% vs. 24%).

- Of the 1,007 Regional Office reversals of agency actions on the merits for non-ATC appeals in FY 1983, only 8 percent were for harmful procedural error. The comparable figure for FY 1982 was 27 percent.

- The extremely large number of ATC appeals decided by the Regional Offices in FY 1983 caused the average processing time to arrive at initial decisions in ATC appeals to rise from 7.56 months in FY 1982 to 15.18 months in FY 1983.

- As the impact of the ATC cases was felt, the average time to decide a non-ATC appeal at the Regional Offices also rose from 3.60 months in FY 1982 to 6.64 months in FY 1983.

- The Regional Offices overturned the actions of some agencies more than others. The Department of Commerce had the lowest reversal/mitigation rate (2%), while the Department of the Interior had the highest (68%).[2]

- Some agencies were reversed more frequently for certain classes of personnel actions than for others. As examples in this regard, the Department of Justice had 27 percent of its adverse action appeals which were decided on the merits reversed or mitigated, and the Departments of Army and the Interior had 42 percent and 80 percent, respectively, of their reduction-in-force appeals reversed or mitigated.

- Each year certain classes of employees win a greater percentage of appeals decided on the merits than do other classes. For FY 1983, nonveterans, females, Wage Grade employees in grades 6-10, General Schedule employees in grades 1-10, Post Office employees in grades 11 and above, and employees 45 years of age and older won at higher rates than did other classes of employees.

B. FINDINGS

In this section we will address the data under the following subheadings: **Appeals Decided, Numbers of Hearings Held, Appeal Outcomes, Decision Times, Agency Standings,** and **Appellant Demographic Characteristics**, such as pay plan, veteran status, sex, grade level within pay plan, and age. Where feasible, we have included the corresponding figures for fiscal year 1982 to illustrate changes which may have occurred from year to year. Aggregated statistics and findings for all of the Regional Offices will be presented in this section; specific information for each Regional Office can be found in Appendix 1.

Appeals Decided

The total number of appeals of all types, both ATC and non-ATC, decided by the Regional Offices rose dramatically from FY 1982 to FY 1983 -- increasing from 5,920 to 18,878. Exhibit 1 shows that the Regional Offices decided all of the remaining ATC appeals (10,802) in FY 1983. The Regional Offices decided 558 ATC appeals in FY 1982.

The Regional Offices also saw a substantial increase in the number of other types of appeals decided in FY 1983. Exhibit 2 shows the numbers and percentages of the various types of non-ATC appeals decided by the Regional Offices and Figure 1 displays a proportional comparison of those percentages

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[2]The Department of the Interior's reversal/mitigation rate was an aberration resulting in large part from improperly conducting a reduction-in-force action of teachers employed by the Bureau of Indian Affairs. This action was overturned and affected 167 people. Had this action not occurred, the Department of the Interior's reversal/mitigation rate would have been among the lowest of all the agencies.

Exhibit 1

REGIONAL OFFICE DECISIONS FOR AIR TRAFFIC CONTROLLER APPEALS IN FY 1982 AND FY 1983, BY OUTCOME OF APPEAL

Outcome	FY 1983 Number of Appeals	FY 1983 Percent of Total Appeals	FY 1983 Number of Hearings Held
Appeal rejected without finding on merits	745	7%	75
Affirmed agency action	9,780	91%	5,338
Mitigated agency action	5	0%	5
Reversed agency action	266	2%	134
Harmful procedural error	(21)		(16)
On the merits	(245)		(118)
Other	6	0%	2
TOTAL	10,802	100%	5,554 1/

Outcome	FY 1982 Number of Appeals	FY 1982 Percent of Total Appeals	FY 1982 Number of Hearings Held
Appeal rejected without finding on merits	415	74%	37
Affirmed agency action	126	23%	87
Mitigated agency action	1	0%	0
Reversed agency action	16	3%	12
Harmful procedural error	(3)		(3)
On the merits	(13)		(9)
TOTAL	558	100%	136

1/ This figure reflects the fact that a substantial number of ATC appeals with the same or similar issues were consolidated for hearing purposes. The actual number of ATC appellants who had hearings is, therefore, appreciably higher than 5,554.

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Exhibit 2

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
BY TYPE OF APPEAL

Type of Appeal	FY 1982 Number	%	FY 1983 Number	%
Adverse Action	2,412	45	3,443	43
Disability Retirement	406	8	1,346	17
Reduction in Force	1,281	24	1,379	17
Termination of Probationers	426	8	526	7
Competence	161	3	181	2
Miscellaneous 1/	324	6	444	6
Nondisability Retirement	153	3	205	2
Other 2/	199	4	544	7
TOTAL	5,362	100%	8,068 3/	100%

1/ Appeals not fitting any other appeal category for which jurisdiction must be decided.

2/ Appeals dealing with a wide variety of issues which are legitimately under the Board's jurisdiction, but which occur so infrequently that the separate categorization and statistical analysis of each is unwarranted.

3/ This figure is 8 short of the base number of 8,076 total non-ATC appeals decided by the Regional Offices in FY 1983. This is due to a coding error which resulted in these 8 appeals not being detected by the Case Tracking System during its processing scan.

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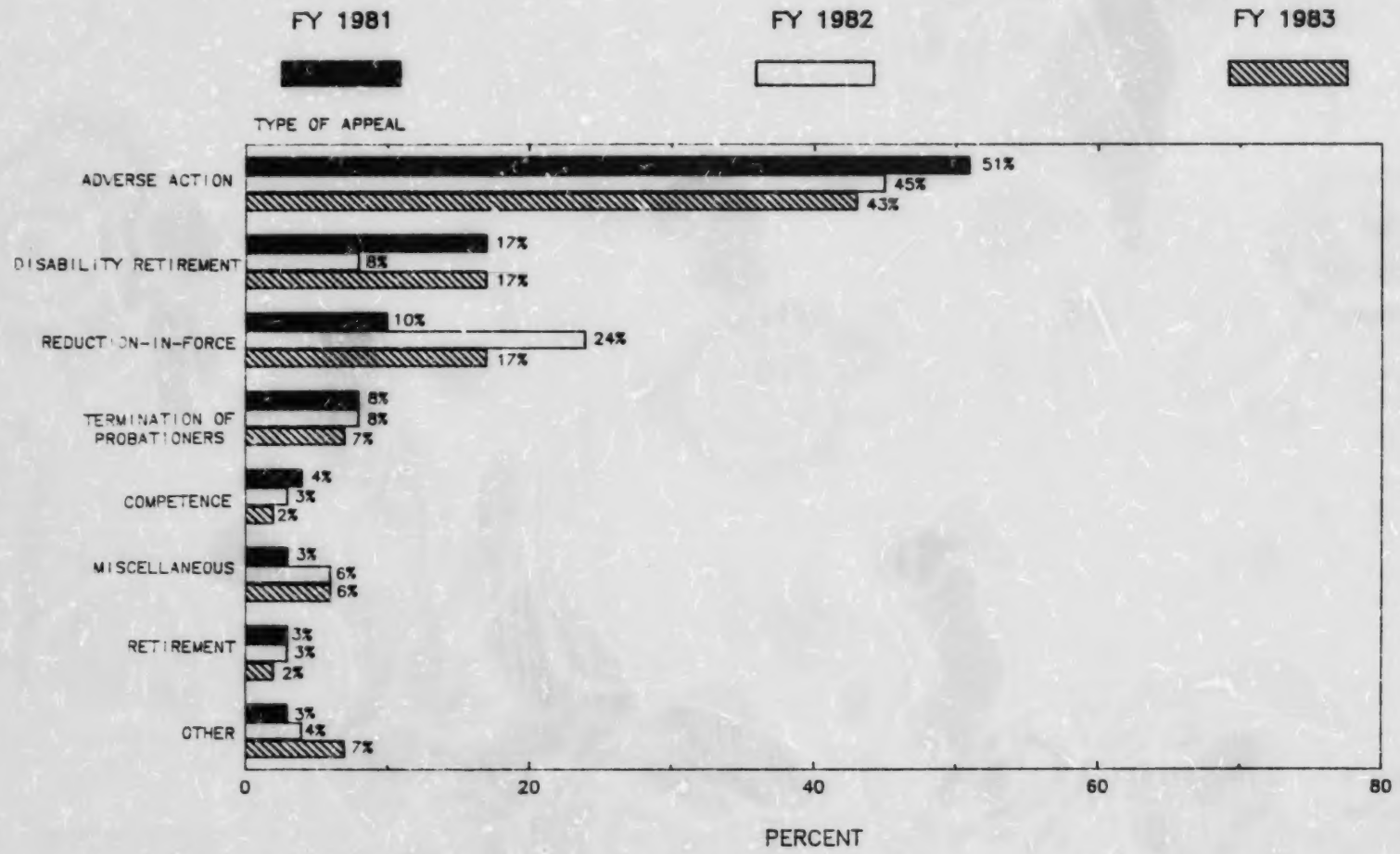
FIGURE 1

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS, BY TYPE OF APPEAL



over time. There was a 51 percent increase (from 5,362 to 8,076)[3] between FY 1982 and FY 1983 in the total number of non-ATC appeals decided. A major portion of this increase can be attributed to appeals decisions related to adverse actions and disability retirement cases. The total of 8,076 non-ATC appeals decided also reflects the inclusion of a backlog of appeals (1,803 cases pending for over 121 days) which the Regional Offices still needed to decide at the beginning of the fiscal year.

As seen in Exhibit 2, the composition of the Regional Offices' non-ATC caseloads for which data are available shifted from FY 1982 to FY 1983, with downturns in adverse action (2 percentage points) and reduction-in-force appeals (7 percentage points) and an increase (9 percentage points) in disability retirement appeals.

Exhibit 3 shows the distribution of actions within each of the types of non-ATC appeals decided in the Regional Offices in FY 1983. Three points are of special interest in this Exhibit: (1) the focus in reduction-in-force appeals has shifted away from separations and toward demotions as the dominant action; (2) adverse action removals and involuntary resignations reduction-in-force separations and termination of probationers appeals, taken together, show that 44 percent of the Regional Offices' cases involved the continued employment of appellants, in contrast to 49 percent in FY 1982; and (3) the number of appeals from agency actions based solely on performance (under Part 432 of Title 5 of the Code of Federal Regulations) rose from 36 in FY 1982 to 207 in FY 1983. The increase in the number of performance related appeals can be attributed primarily to the adoption of performance plans by agencies in FY 1983.[4]

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[3]For purposes of this report, only those appeals which were entered into the Case Tracking System are analyzed. The 5,362 figure for appeals decided by the Regional Offices in FY 1982 does not include 1,322 appeals not entered into the Case Tracking System.

[4]One of the key objectives of the Civil Service Reform Act of 1978 (CSRA) was to simplify the procedures for an agency to remove or reduce in grade or pay an employee whose performance is unsatisfactory. The CSRA required all agencies to have an OPM-approved appraisal system in place by October 1, 1981. Performance plans developed in accordance with the OPM-approved appraisal systems had been fully implemented by the beginning of FY 1983. Consequently, agencies were in a better position to initiate performance-based actions against those employees who had demonstrated unsatisfactory performance.

Exhibit 3

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
BY DISTRIBUTION OF ACTIONS WITHIN TYPES OF APPEALS

Type of Appeal	FY 1983 Number	FY 1983 Percent	FY 1982 Number	FY 1982 Percent
Adverse Action	**3,465**	**42%**	**2,198**	**45%**
Removal	2,555	31	1,483	30
Suspension	398	5	200	4
Grade Reduction	178	2	117	2
Involuntary Resignation	91	1	66	1
Pay Reduction	19	0	31	1
Other	224	3	301	6
Nondisability Retirement	**207**	**3%**	**126**	**3%**
Annuity Pay to Survivor	40	1	30	1
Other	167	2	96	2
Disability Retirement	**1,347**	**16%**	**383**	**8%**
Reject Employee Application	1,297	16	370	8
Other	50	0	13	0
Reduction in Force	**1,546**	**19%**	**1,176**	**24%**
Separation	509	6	497	10
Reassignment	138	2	216	4
Downgrade	604	7	320	7
Other	295	4	143	3
Termination of Probationers	**525**	**6%**	**395**	**8%**
Termination	482	6	375	8
Involuntary Resignation	9	0	8	0
Other	34	0	12	0
Competence	**181**	**2%**	**145**	**3%**
Negative Reconsideration	151	2	113	2
Other	30	0	32	1
Miscellaneous	**444**	**5%**	**305**	**6%**
Other	**544**	**7%**	**190**	**4%**
Part 432	207	3	36	1
Remainder	337	4	154	3
TOTAL	**8,259** 1/	**100%**	**4,918** 2/	**100%**

1/ These figures are higher than the corresponding numbers listed elsewhere in this report. This is due to a coding error which resulted in the double counting of some appeals which were entered into the Case Tracking System as having more than one closing action.

2/ The Regional Offices decided 5,362 non-ATC appeals in FY 1982; however, only 4,918 appeals were identified by type of appeal and action by the Case Tracking System.

Numbers of Hearings Held

The Civil Service Reform Act gives every appellant to MSPB the right to a hearing if he or she so desires. The Regional Offices held hearings in 5,554[5] ATC appeals decided in FY 1983 (see Exhibit 1). Exhibit 1 also shows that 99 percent of the hearings which were held (5,479 out of 5,554) dealt with appeals which were decided on the merits.

The Regional Offices also held hearings on 2,824 non-ATC appeals decided in FY 1983. This is an increase of 1,235 (78%) over the 1,589 non-ATC hearings held by the Regional Offices in FY 1982 (see Exhibit 4). In FY 1983, the Regional Offices implemented a policy of eliminating the backlog of appeals that were filed in previous years. This accounts for most of the increase in hearings held in FY 1983. Exhibit 4 also shows that the percentage of appeals decided by the Regional Offices for which hearings were held rose from 30 percent in FY 1982 to 35 percent in FY 1983. Most of the increase both in the percentage of appeals with hearings and in the absolute number of hearings held was attributable to adverse action appeals.

Appeal Outcomes

By the beginning of FY 1983 most of the FY 1982 appeals, both ATC and non-ATC, which had been determined to be either outside of the Board's jurisdiction or untimely filed had already been dismissed. Those FY 1982 appeals in which no hearing had been requested had also been decided. Therefore, the majority of the FY 1982 appeals which remained open pending resumption of normal hearing activities were those which required a decision on the merits.

The completion of FY 1982 appeals during FY 1983 is reflected in the increase, from 26 percent[6] in FY 1982 to 93 percent[7] in FY 1983, in the percentage of ATC appeals decisions which were based on the merits of the cases (see Exhibit 1). Exhibit 1 also shows that 3 percent (271 out of 10,057) of the ATC appeals which were decided on the merits in FY 1983 reversed or mitigated the agency action.

The completion of FY 1982 appeals during FY 1983 also contributed to the increase, from 47 percent in FY 1982 to 50 percent in FY 1983, in the percentage of non-ATC appeals which were decided on the merits (see Exhibit 5). The proportional differences between FY 1983 and FY 1982 non-ATC appeal outcomes are displayed in Figure 2. An examination of these outcomes also shows that of the 8,076 non-ATC appeals decided in FY 1983, 86 percent left

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[5]Some of the hearings dealt with appeals with the same or similar issues which were consolidated for hearing purposes. Other hearings were held jointly at various controller work sites for convenience of administration. Consequently, the actual number of ATC appellants who had hearings is appreciably higher than 5,554.

[6]143 out of 558 ATC appeals decided in FY 1982 were based on the merits of the cases.

[7]10,057 out of 10,802 appeals decided in FY 1983 were based on the merits of the cases.

Exhibit 4

REGIONAL OFFICE HEARINGS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
BY TYPE OF APPEAL

Type of Appeal	FY 1982 Number Decided	FY 1982 Number Hearings	FY 1982 %	FY 1983 Number Decided	FY 1983 Number Hearings	FY 1983 %
Adverse Action	2,412	919	38	3,443	1,603	47
Disability Retirement	406	153	38	1,346	484	36
Reduction in Force	1,281	368	29	1,379	319	23
Termination of Probationers	426	19	4	526	63	12
Competence	161	52	32	181	63	35
Miscellaneous	324	2	1	444	34	8
Nondisability Retirement	153	27	18	205	38	19
Other	199	49	25	544	220	40
TOTAL	5,362	1,589	30%	8,068 1/	2,824	35%

1/ This figure is 8 short of the base number of 8,076 appeals used elsewhere in this report. This is due to a coding error which resulted in these 8 appeals not being detected by the Case Tracking System during its processing scan.

Exhibit 5

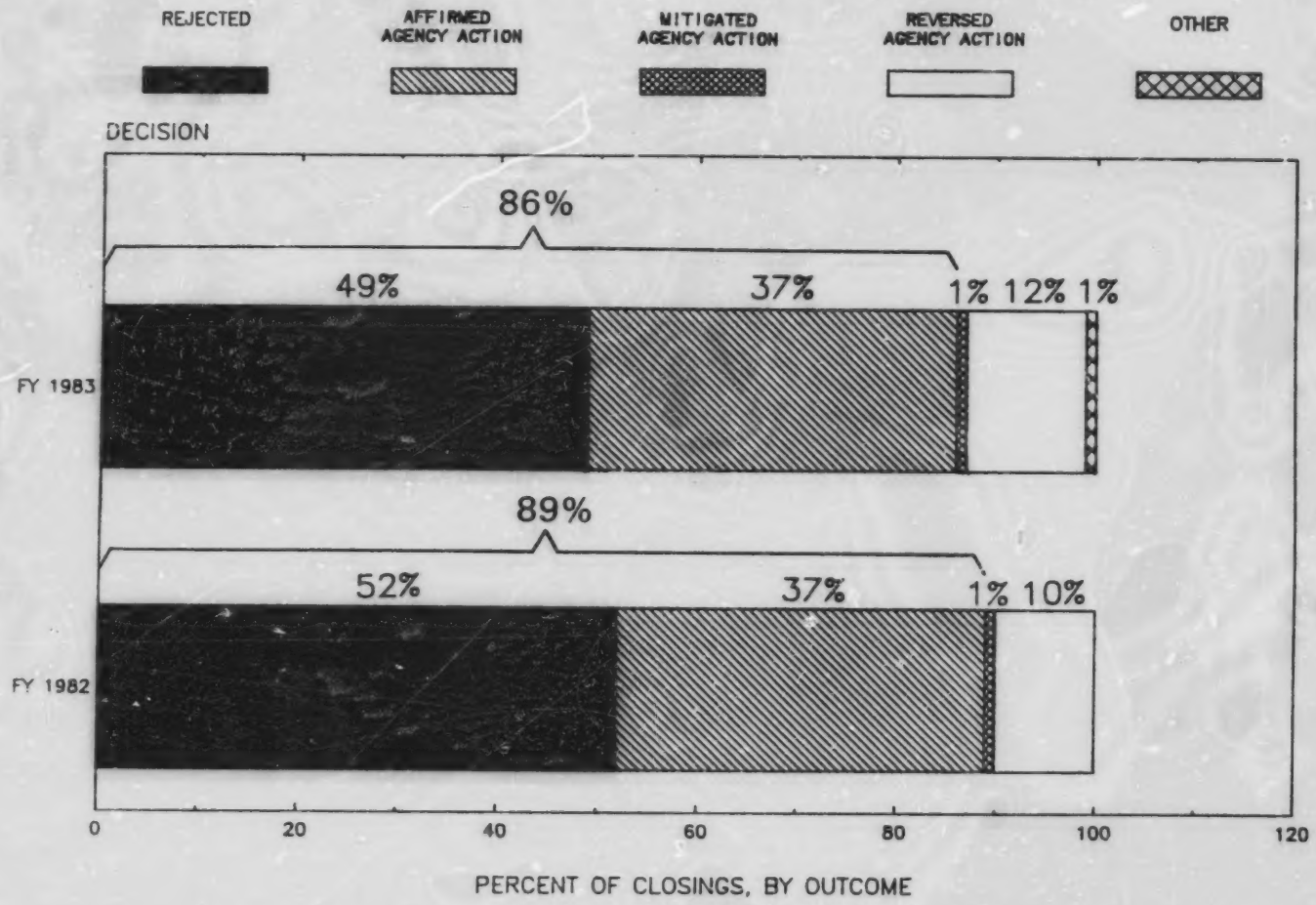
REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
BY OUTCOME OF APPEAL

Outcome	FY 1982 Number	%	FY 1983 Number	%
Appeal rejected without finding on merits	2,542	52	3,924	49
Appeal remanded to agency	0	0	3	0
Appeal decided on merits: affirmed, mitigated, or reversed	2,339	47	4,088	50
Other decisions	37	1	61	1
TOTAL	4,918[1/]	100%	8,076	100%

1/ The Regional Offices decided 5,362 non-ATC appeals in FY 1982; however, only 4,918 appeals were identified by type of outcome by the Case Tracking System.

FIGURE 2

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS, BY OUTCOME



the agency action effectively unchanged either because the appeal was rejected or because the agency action was affirmed. The comparable figure for FY 1982 was 89 percent.

Exhibit 6 sets forth the outcomes of those non-ATC appeals which were decided on the merits. As seen in Exhibit 6, the Regional Offices reversed or mitigated more agency actions in FY 1983 (27%) than in FY 1982 (24%). Figure 3 presents a visual comparison of these differences.

Exhibit 7 shows the percentage of non-ATC appeals decided on the merits which were reversed or mitigated, by type of appeal. As seen in Exhibit 7, adverse action, competence, and retirement appeals all showed significant downturns in reversals or mitigations of agency personnel actions, dropping in FY 1983 from one-third to two-thirds of their FY 1982 levels. The reversal and mitigation rate for reduction-in-force appeals, however, more than doubled from FY 1982 to FY 1983, rising from 13 percent to 28 percent. One reason for the increase in the reversal/mitigation rate for reduction-in-force appeals appears to relate to Department of Interior appeals, where the rate was high in comparison to the remainder of the Government (80% vs. 28%, respectively).[8]

The data show that the vast majority of Regional Office reversals of agency actions for non-ATC appeals in FY 1983 were based on the merits of the cases. Referring again to Exhibit 6, we find that reversals of agency actions for harmful procedural error[9] in non-ATC appeals dropped from 6 percent of all non-ATC appeals decided on the merits in FY 1982 to 2 percent of all non-ATC appeals decided on the merits in FY 1983. The former figure represents 27 percent of the 505 non-ATC reversals by the Regional Offices in FY 1982, while the latter figure represents 8 percent of the 1,007 non-ATC reversals in FY 1983. These proportions are also shown graphically in Figure 4. This decrease was apparently due to the diminished impact of the Cuellar decision in FY 1983.[10]

Exhibit 8 shows the distribution of non-ATC appeals decisions for FY 1983 involving reversals for harmful procedural error by type of appeal. Reversals for harmful procedural error in FY 1983, as in FY 1982, occurred mainly in adverse action and reduction-in-force appeals. The percentage of reversals for

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[8]See Note 2 of this chapter.

[9]See Note 9, Chapter 1.

[10]During FY 1982, the Board released a precedential opinion in Cuellar v. U.S. Postal Service, 8 MSPB 282 (1981). In Cuellar, the Board held that OPM regulations at 5 CFR 752.404(d)(3), allowing agencies to suspend employees without providing 30 days' notice under certain situations, was not authorized by 5 U.S.C. section 7514. The Board also held that actions taken pursuant to that regulation did not adhere to the procedural requirements of 5 U.S.C. section 7513 and that the omission of the procedural right in those actions constituted clear harmful procedural error. Relying on Cuellar, a number of later appeal decisions reversed agency actions for procedural error. This resulted in a substantial but temporary increase in the percentage of reversals for harmful procedural error during FY 1982.

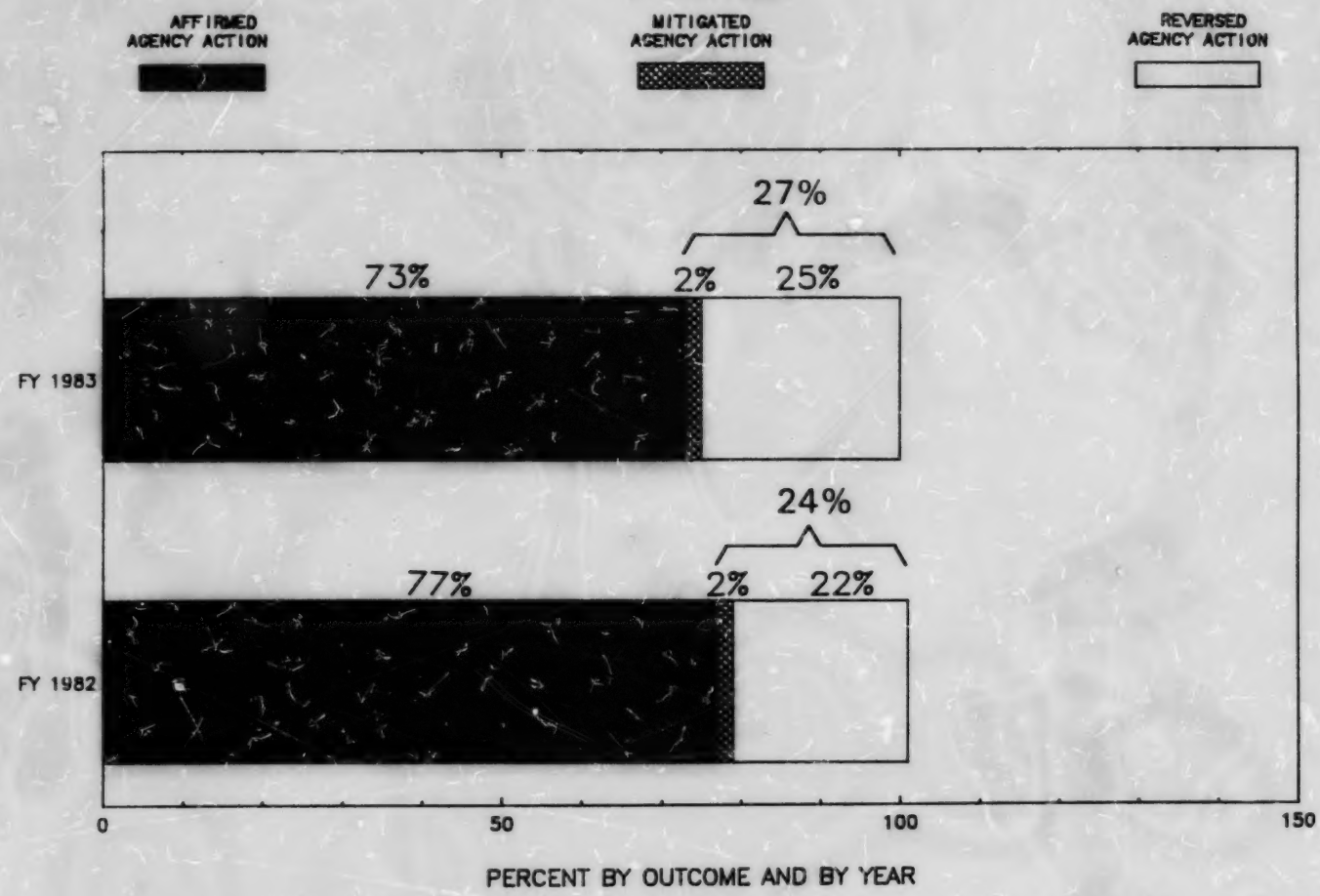
Exhibit 6

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
WHICH AFFIRMED, MITIGATED, OR REVERSED AGENCY ACTIONS

Outcome	FY 1982 Number	%	FY 1983 Number	%
Affirmed agency action	1,797	77	3,000	73
Mitigated agency action	37	2	81	2
Reversed agency action	505	22	1,007	25
Harmful procedural error	(134)	(6)	(83)	(2)
On the merits	(351)	(15)	(913)	(22)
Other	(20)	(1)	(11)	(0)
TOTAL	2,339	100%	4,088	100%

FIGURE 3

REGIONAL OFFICE DECISIONS ON THE MERITS FOR NON-ATC APPEALS, BY OUTCOME



Numbers may not add up to 100% due to rounding.

Exhibit 7

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
WHICH REVERSED OR MITIGATED AGENCY ACTIONS,* BY TYPE OF APPEAL

Type of Appeal	FY 1982	FY 1983	Change from FY 1982
Adverse Action	24%	16%	- 8%
Disability Retirement	46%	47%	+ 1%
Reduction in Force	13%	28%	+ 15%
Termination of Probationers	0%	24%	+ 24%
Competence	25%	9%	- 16%
Nondisability Retirement	16%	10%	- 6%
Other 1/	26%	19%	- 7%
OVERALL	23%	26%	+ 3%

1/ Includes both the "miscellaneous" category and performance-based (Part 432) actions.

* The percentages in this exhibit represent the proportions of decisions in each appeal category which were made on the merits of the cases and which reversed or mitigated agency actions. For example, the 16% figure shown for Adverse Action decisions in FY 1983 represents those 286 decisions out of the total of 1,791 adverse action decisions made on the merits of the cases which reversed or mitigated agency actions. A complete display of the numbers used to create this exhibit can be seen in Appendixes 1 and 2.

FIGURE 4

REGIONAL OFFICE DECISIONS ON THE MERITS FOR NON-ATC APPEALS,
REASON FOR REVERSAL OF AGENCY ACTION

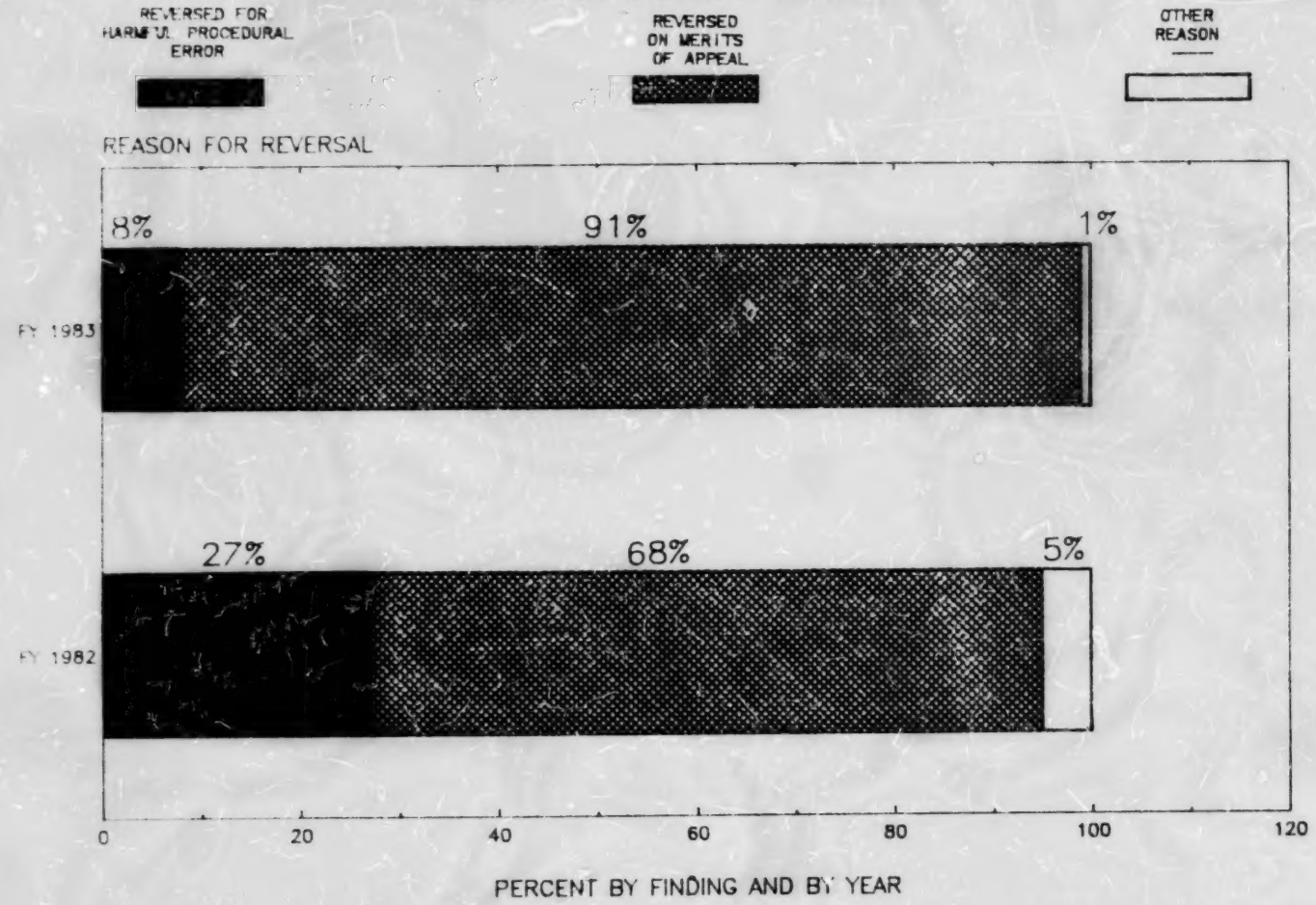


Exhibit 8

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1983 INVOLVING PROCEDURAL REVERSALS,
BY TYPE OF APPEAL

Type of Appeal	FY 1983 Number of Reversals/ Mitigations	FY 1983 Number Reversed on Procedures	FY 1983 Percent Reversed on Procedures	FY 1982 Percent Reversed on Procedures
Adverse Action	286	39	14%	36%
Disability Retirement	500	0	0%	0%
Reduction in Force	229	22	10%	28%
Termination of Probationers	5	3	60%	0%
Competence	7	4	57%	6%
Nondisability Retirement	15	3	20%	0%
Other 1/	46	12	26%	60%
TOTAL	1,088	83	8%	25% 2/

1/ Includes one appeal classified as "miscellaneous" as well as appeals for performance-based (Part 432) actions.

2/ The Regional Offices reversed or mitigated agency actions in 542 appeals decided in FY 1982.

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harmful procedural error for both adverse action and reduction-in-force appeals dropped substantially (61% and 64%, respectively) in FY 1983 from their FY 1982 levels.[11]

The drop in the number of procedural reversals for non-ATC adverse action appeals (from 97 in FY 1982 to 39 in FY 1983) was to be expected in light of the Cuellar decision, as noted above. These figures are set forth in Exhibit 9, which also shows that the bulk (27%) of procedural reversals for adverse actions occurred for removal actions in FY 1983. This contrasts with the FY 1982 finding that furloughs constituted the bulk (45%) of the procedural reversals.

Decision Times

As the Regional Offices focused on processing the backlog of FY 1982 appeals, high priority was given to the completion of the oldest cases. This emphasis resulted in lengthening the average decision times for more recently received appeals.

The increased workload in the Regional Offices caused the average time to decide an ATC appeal to rise from 7.56 months in FY 1982 to 15.18 months in FY 1983 (see Exhibit 10). At least part of this increase can also be attributed to delays caused by the completion of pre-hearing factfinding activities engaged in by the parties involved. It required an average of 12.88 months to close an appeal which was rejected without a finding on the merits and 15.35 months to close an appeal which was decided on the merits. Thus, appeals which were rejected were decided roughly 2-1/2 months faster than appeals which were decided on the merits.

Exhibit 11 shows that the average time to decide a non-ATC appeal in FY 1983 was 6.64 months, and that appeals which were rejected were processed, on average, about 4 months faster than appeals which were decided on the merits. As shown in Exhibit 12, the average time to decide a non-ATC appeal rose from 3.60 months in FY 1982 to 6.64 months in FY 1983. Concomitantly, the Regional Offices decided a lower percentage of appeals within the Board's 120-day deadline in FY 1983 than in FY 1982 (40% vs. 87%). The increase in the average decision time for these non-ATC appeals clearly reflects the impact of deciding 10,802 additional ATC appeals in the Regional Offices in FY 1983.

Exhibit 13 shows that decision times increased for every type of appeal, with the average amount of increase in processing time varying with the type of appeal. Miscellaneous appeals, for example, showed the smallest increase (.4 month) while reduction-in-force appeals showed the greatest increase (5.9 months).

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[11]For adverse action appeals, the percentage of reversals for harmful procedural error dropped from 36 percent to 14 percent--a 61 percent decrease. For reduction-in-force appeals, the percentage of reversals for harmful procedural error dropped from 28 percent to 10 percent--a 64 percent decrease.

Exhibit 9

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983 INVOLVING PROCEDURAL REVERSALS,
BY DISTRIBUTION OF ACTIONS WITHIN TYPES OF APPEALS

Type of Appeal	Action	FY 1983 Number of Procedural Reversals	FY 1983 Percent of Total Procedural Reversals	FY 1982 Number of Procedural Reversals	FY 1982 Percent of Total Procedural Reversals
Adverse Action	Furlough (30 days or less)	2	2%	60	45%
	Removal	22	27%	12	9%
	Suspension	6	7%	11	8%
	Involuntary Resignation	1	1%	5	4%
	Grade Reduction	3	4%	2	1%
	Other	5	6%	7	5%
		39	**47%**	**97**	**72%**
Reduction in Force	Separation	17	20%	21	15%
	Demotion	4	5%	5	4%
	Other	1	1%	1	1%
		22	**26%**	**27**	**20%**
Competence		4	5%	1	1%
Disability Retirement		0	0%	0	0%
Nondisability Retirement		3	4%	0	0%
Other Types of Appeals 1/		15	18%	9	7%
	TOTAL	83 2/	100%	134 3/	100%

1/ Includes one appeal classified as "miscellaneous" as well as appeals for performance-based (Part 432) actions.

2/ The Regional Offices reversed or mitigated agency actions in 1,088 appeals decided in FY 1983.

3/ The Regional Offices reversed or mitigated agency actions in 542 appeals decided in FY 1982.

Exhibit 10

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES
FOR AIR TRAFFIC CONTROLLER APPEALS,
IN FY 1982 AND FY 1983,
BY OUTCOME OF APPEAL

FY 1983

Outcome	Number of Appeals	Average Decision Time (Months)[1/]
Appeal Rejected	745	12.88
Appeal Decided on the Merits	10,057	15.35
TOTAL	10,802	15.18

FY 1982

Outcome	Number of Appeals	Average Decision Time (Months)
Appeal Rejected	415	6.64
Appeal Decided on the Merits	143	10.26
TOTAL	558	7.56

1/ For the purpose of analysis, 30 days = 1 month.

Exhibit 11

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES
FOR NON-ATC APPEALS IN FY 1983,
BY OUTCOME OF APPEAL

Outcome	Number of Appeals	Average Decision Time (Months) 1/
Appeal Rejected	3,849	4.67
Appeal Reached on the Merits	4,152	8.50
Other	75	4.57
TOTAL	8,076	6.64

1/ For the purpose of analysis, 30 days = 1 month.

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Exhibit 12

DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS
IN FY 1982 AND FY 1983,
IN TIME INTERVALS MEASURED IN MONTHS 1/

Decision Time (Months)	FY 1982 Number of Appeals	%	Cum. % of Appeals	FY 1983 Number of Appeals	%	Cum. % of Appeals
0 - .99	160	2%	2%	209	3%	3%
1 - 1.99	554	10%	12%	852	10%	13%
2 - 2.99	887	16%	28%	988	12%	25%
3 - 3.99	3,170	59%	87%	1,188	15%	40%
4 +	701	13%	100%	4,831	60%	100%
TOTAL	5,472	100%	100%	8,068 2/	100%	100%
Average Decision Time	3.60 Months			6.64 Months		

1/ For the purpose of analysis, 30 days = 1 month.

2/ This figure is 8 short of the base number of 8,076 appeals used elsewhere in this report. This is due to a coding error which resulted in these 8 appeals not being detected by the Case Tracking System during its processing scan.

Exhibit 13

AVERAGE DECISION TIMES AT THE REGIONAL OFFICES FOR NON-ATC APPEALS IN FY 1982 AND FY 1983, BY TYPE OF APPEAL, IN TIME INTERVALS MEASURED IN MONTHS 1/

Type of Appeal	FY 1982	FY 1983
Adverse Action	3.7	6.8
Disability Retirement	3.8	5.7
Reduction in Force	3.8	9.7
Termination of Probationers	2.7	3.4
Competence	3.4	6.5
Miscellaneous	2.9	3.3
Nondisability Retirement	4.0	6.4
Other	3.4	6.1
OVERALL AVERAGE	3.6 months	6.6 months

1/ For the purpose of analysis, 30 days = 1 month.

Agency Standings

The Regional Offices overturned the actions of some agencies more than others. Exhibit 14 displays the results for agencies in FY 1983, as measured by the percentage of appeals decisions on the merits in cases in which agency actions were reversed or mitigated. Overall, the reversal/mitigation rate was 26 percent.[12] The Department of Commerce had the lowest reversal/mitigation rate (2%), while the Department of Interior had the highest (68%). Exhibit 15 displays agency results portrayed by type of appeal. It shows that some agencies were reversed heavily for certain classes of personnel actions. The Department of Justice, for example, had 27 percent of its adverse action appeals which were decided on the merits reversed or mitigated, while the Departments of Army and Interior[13] had 42 percent and 80 percent, respectively, of their reduction-in-force appeals reversed or mitigated.

Appellant Demographic Characteristics

Exhibits 16 through 20 show the total number of appeals decided, the number of appeals decided on the merits, the number reversed or mitigated, and the percent reversed or mitigated for each of the following employee demographic characteristics: pay plan, veteran status, sex, grade level within pay plan, and age. Each year certain classes of employees have a greater percentage of reversals and mitigations of appeals decided on the merits than do other classes. The distribution varies from year to year.

For FY 1983, nonveterans (Exhibit 17), females (Exhibit 18), Wage Grade employees in grades 6-10, General Schedule employees in grades 1-10, Post Office employees in grades 11 and above (Exhibit 19), and employees 45 years of age and older (Exhibit 20) had higher rates of reversals and mitigations of appeals decided on the merits than did other classes of employees.[14] In FY

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[12]This figure varies from the 27 percent cited earlier in this chapter due to the inclusion of three "appeals remanded to agencies" and 61 "other decisions" in calculating the total number of appeals considered to have been decided on the merits (see Exhibit 5). The total number of appeals decided on the merits in FY 1983 is thereby raised from 4,086 to 4,152 for purposes of calculation.

[13]The Department of the Interior's reduction-in-force action was reversed in a consolidated appeal involving 167 appellants employed by the Bureau of Indian Affairs. These employees were converted from permanent full-time to permanent seasonal employees. In Adakai, et. al. v. Department of the Interior, MSPB Docket No. SF03518210102 (April 2, 1984), the Board affirmed the decision of the presiding official to reverse the agency's reduction-in-force actions pursuant to the precedent established by Bennally v. Department of the Interior, 12 MSPB 298 (1982). If Adakai had not occurred, the Department of the Interior's overall reversal/mitigation rate would have been among the lowest of all the agencies.

[14]The probability of observing these differences from random statistical fluctuation was less than one in a thousand.

Exhibit 14

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY MAJOR AGENCY

	Number Decided	Percent of Total Decisions	Number Decided on the Merits	Percent Decided on the Merits[1]	Number Reversed/ Mitigated[2]	Percent Reversed/ Mitigated[3]
Air Force	392	5%	195	50%	18	9%
Agriculture	252	3%	115	46%	19	17%
Army	661	8%	296	45%	58	20%
Commerce	241	3%	175	73%	4	2%
DoD (Miscellaneous)	163	2%	80	49%	12	15%
Energy	61	1%	31	51%	4	13%
Justice	177	2%	59	33%	16	27%
Labor	70	1%	34	49%	3	9%
IRS	196	2%	99	51%	12	12%
HUD	123	1%	78	63%	6	8%
Interior	397	5%	249	63%	170	68%
Navy	629	8%	263	42%	44	17%
Post Office	1,096	14%	373	34%	76	20%
Tennessee Valley Authority	154	2%	88	57%	12	14%
Transportation	183	2%	69	38%	11	16%
Treasury	204	3%	87	43%	14	16%
Veterans Administration	464	6%	184	40%	29	15%
Other	441	5%	143	32%	18	13%
Unavailable	457	6%	232	51%	24	7%
OPM[4]	1,715	21%	1,302	76%	538	41%
TOTAL	**8,076**	**100%**	**4,152**	**51%**	**1,088**	**26%**

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[1]These figures represent the number of appeals decided on the merits as a percent of the total number of appeals decided for each agency.

[2]These figures represent the number of appeals decided on the merits which reversed or mitigated the agency decisions.

[3]These figures represent the percent of appeals decided on the merits which reversed or mitigated the agency decisions.

[4]OPM makes the initial determination of agency or employee requests for disability and other retirement. Appeals from those determinations make up the vast majority of Regional Office decisions attributable to OPM.

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Exhibit 15

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983 WHICH REVERSED OR MITIGATED AGENCY ACTIONS, PERCENTAGES BY AGENCY AND TYPE OF APPEAL[1]

	Adverse Action	Disability Retirement	Reduction in Force	Termination of Probationers	Competence	Nondisability Retirement	Other	Average
Air Force	10	0	14		0	0	9	9
Agiculture	18	0	19	0	0	0	0	17
Army	16	0	42	20	44	0	12	20
Commerce	13	0	2	0	0	0	0	2
DoD (Miscellaneous)	14	0	0	50	20	0	13	15
Energy	20	0	9	0	0	0	50	13
Justice	27	0	25	100	0	0	17	27
Labor	6	0	13	0	0	0	0	9
HHS	15	0	0	0	6	0	14	12
HUD	30	0	5	0	0	0	0	8
Interior	8	0	80	0	0	0	10	68
Navy	17	0	7	50	0	0	17	17
Post Office	20	0	100	0	0	0	33	20
Tennessee Valley Authority	23	0	8	0	0	0	0	14
Transportation	12	0	15	0	0	0	75	16
Treasury	20	0	6	0	0	0	0	16
Veterans Administration	16	0	0	0	20	0	17	15
Other	10	0	18	100	0	0	0	13
Unavailable	13	0	8	0	0	0	0	7
OPM[2]	8	47	0	0	0	10	32	41
TOTAL[3]	**16%**	**47%**	**28%**	**24%**	**9%**	**10%**	**19%**	**26%**

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[1]The percentages in this exhibit represent the proportions of decisions in each appeal category which were made on the merits of the cases and which reversed or mitigated agency actions.

[2]OPM makes the initial determination of agency or employee requests for disability and other retirement. Appeals from those determinations make up the vast majority of Regional Office decisions attributable to OPM.

[3]A total of 8,076 non-ATC appeals were decided by the Regional Offices in FY 1983.

Exhibit 16

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY PAY PLAN OF APPELLANT

Pay Plan	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Wage Grade	1267	729	171	23%
Post Office	943	453	127	28%
General Schedule	3397	1726	458	27%
Other	301	161	34	21%
Unavailable	2168	1083	298	28%
TOTAL	8076	4152	1088	26%

Exhibit 17

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY VETERAN STATUS OF APPELLANT

Veteran Status	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Veteran	2992	1564	332	21%
Nonveteran	2157	1160	382	33%
Unknown	2927	1428	374	26%
TOTAL	8076	4152	1088	26%

Exhibit 18

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY SEX OF APPELLANT

Sex	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Female	2017	1123	401	36%
Male	5245	2641	612	23%
Unknown	814	388	75	19%
TOTAL	8076	4152	1088	26%

Exhibit 19

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY GRADE LEVEL WITHIN PAY PLAN OF APPELLANT 1/

Pay Plan		Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
Wage Grade	1-5	526	304	59	19%
	6-10	632	376	102	27%
	11-15	81	39	8	21%
	16 +	5	3	0	0%
Unavailable		23	7	2	29%
TOTAL		**1267**	**729**	**171**	**23%**
General Schedule	1-5	1249	638	182	29%
	6-10	1011	521	153	29%
	11-15	1113	555	118	21%
	16 +2/	1	0	0	0%
Unavailable		23	12	5	42%
TOTAL		**3397**	**1726**	**458**	**27%**
Post Office	1-5	728	342	92	27%
	6-10	121	55	12	22%
	11-15	25	15	9	60%
	16+	22	13	5	38%
Unavailable		47	28	9	32%
TOTAL		**943**	**453**	**127**	**28%**

1/ This exhibit is a more detailed display of Exhibit 14.

2/ The Senior Executive Service is not included in this breakdown.

Exhibit 20

REGIONAL OFFICE DECISIONS FOR NON-ATC APPEALS IN FY 1983,
BY AGE OF APPELLANT

Age	Number Decided	Number Decided on the Merits	Number Decided on Merits which were Reversed/ Mitigated	Percent Decided on Merits which were Reversed/ Mitigated
15 - 19	2	1	0	0%
20 - 24	71	31	6	19%
25 - 29	469	224	33	15%
30 - 34	818	413	84	20%
35 - 39	927	521	141	27%
40 - 44	696	416	110	26%
45 - 49	639	367	121	33%
50 - 54	840	521	188	36%
55 - 59	678	390	149	38%
60 +	500	299	74	25%
TOTAL	5640 1/	3183	906	28%

1/ In FY 1983, 8,076 non-ATC appeals were decided. When the Case Tracking System was searched by outcome and by age of appellant, however, only 5,640 appeals were identified. The other 2,436 appeals did not have this classification data entered.

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1982, Post Office employees, General Schedule employees in grades 11 and above, and employees in the 50-59 years age bracket had the highest success rates.[15]

C. CONCLUDING OBSERVATIONS

The summary view of the processing of appeals in the Regional Offices for FY 1983 is as follows:

The caseload at the Regional Offices increased phenomenally from FY 1982 to FY 1983, with 10,802 ATC appeals and 8,076 non-ATC appeals decided in FY 1983. By comparison, only 558 ATC appeals and 5,362 non-ATC appeals were decided in FY 1982.

The numbers of hearings held also rose substantially from prior levels. The Regional Offices held hearings in 5,554 ATC appeals and 2,824 non-ATC appeals decided in FY 1983.

Greater percentages of both ATC and non-ATC appeals were decided on the merits of the cases in FY 1983 than in FY 1982. The increase for ATC appeals decided on the merits rose from 26 percent in FY 1982 to 93 percent in FY 1983. Ninety-seven percent of these decisions affirmed the agency action.

The Regional Offices reversed or mitigated more agency actions for non-ATC appeals decided on the merits in FY 1983 than in FY 1982. Of all non-ATC appeals decided in FY 1983, 86 percent left the agency action effectively unchanged. The comparable figure for FY 1982 was 99 percent.

The vast majority of Regional Office reversals of agency actions in FY 1983 were based on the merits of the cases. Only 8 percent of all reversals for non-ATC appeals in FY 1983 were for harmful procedural error.

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[15] U.S. Merit Systems Protection Board, Office of Merit Systems Review and Studies, Study of MSPB Appeals Decisions for FY 1982, December 1983, pp. 34-37.

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CHAPTER 3

THE BOARD

A. INTRODUCTION

Agencies and appellants, when dissatisfied with the outcome of a Regional Office decision, may request the Board to review the case by filing a Petition for Review (PFR) within 35 days of the issuance of the Regional Office decision. The Special Counsel and the Director of the Office of Personnel Management (OPM) may also make such requests and the Board itself may decide to reopen and reconsider a case on its own motion.

Each PFR is examined by the Board in light of criteria specified in the Code of Federal Regulations (5 C.F.R. section 1201.115). A determination is then made as to whether to grant or deny the PFR. If a PFR is granted, the Board determines whether to affirm or overturn the Regional Office decision. If a Petition for Review is denied, then the initial decision made by the Regional Office stands and becomes the final decision of the Board. When issuing a final decision in a case, the Board may either: 1) leave the Regional Office decision unchanged by not granting the PFR or by granting the PFR and affirming the Regional Office decision; or 2) overturn the Regional Office decision by granting the PFR and reversing, remanding, mitigating, or vacating the decision. It should be pointed out that the Board considers and decides all PFR's filed. A PFR is granted most commonly in order to reverse the Regional Office decision or to address an issue and offer guidance on it.

During fiscal year 1983, a substantial portion of the available resources of the Office of Appeals Counsel (OAC) and of the appointed Board itself was directed toward the processing of Petitions for Review (PFR's) covering over 5,000[1] former Air Traffic Controllers. This task began early in the fiscal year by the formation of a task force within OAC and was completed at the end of the fiscal year by the transmission of all Air Traffic Controller (ATC) PFR's from OAC to the Board for final decision.

All references to ATC decisions or PFR's in this report represent the number (or percent) of ATC PFR's which were finally decided, either individually or as part of a consolidation, by the Board in FY 1983. The findings and discussion which follow reflect the extraordinary nature of the Board's workload during FY 1983 and the unique means and methods used to accomplish its mission during that time.

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[1]Although over 5,000 appellants originally petitioned the Board in FY 1983, a number of them subsequently withdrew their petitions before they could be adjudicated by the Board. Final action on other PFR's was not taken until FY 1984. For these reasons, a total of only 2,965 individuals are listed in this report as having received final Board decisions in FY 1983.

Major Findings

Based on an analysis of data on petitions to the Board during fiscal year 1983, and where feasible, the corresponding figures for fiscal year 1982, the major findings are as follows:[2]

- The total number of PFR's decided by the Board increased substantially from FY 1982 to FY 1983 -- rising from 1,192 to 3,881. This included PFR's covering 2,965 Air Traffic Controllers and 916 non-ATC PFR's. The number of non-ATC PFR's decided dropped 23 percent (from 1,192 to 916) from FY 1982 to FY 1983. [The Board did not decide any ATC PFR's in FY 1982.]

- The majority (2,515 of 2,965) of the ATC PFR's decided by the Board were requested by employees. The remaining PFR's were split between agency requests and requests by both agencies and employees. The bulk of the non-ATC PFR's were also requested by employees (835 of 916) and virtually all of the remainder by agencies.

- In FY 1983 the Board granted 28 percent (832 of 2,965) of all the ATC PFR's decided. The Board also granted 19 percent (171 of 916) of all the non-ATC PFR's decided.

- The Board granted 471 (19%) of the 2,515 ATC employee PFR's, compared to 202 (89%) of the 228 ATC agency PFR's, and 159 (72%) of the 222 ATC joint employee-agency PFR's. The Board granted 113 (14%) of the 835 non-ATC employee PFR's, in comparison to 58 (72%) of the 80 non-ATC agency PFR's.

- The Board overturned proportionately fewer non-ATC Regional Office decisions in FY 1983 than in FY 1982. Of the 916 non-ATC PFR's decided in FY 1983, 106 (12%) of the PFR's requested by any party resulted in the Regional Office decision being overturned, down from 20 percent (238 out of 1,192) in FY 1982. In other words, the Board affirmed 88 percent of the Regional Office decisions in FY 1983 compared to 80 percent in FY 1982.

- Of the 171 non-ATC PFR's granted in FY 1983, 106 (62%) of the PFR's granted to any party resulted in Regional Offices' decisions being overturned, down from 89 percent (238 out of 268) in FY 1982.

- In FY 1983, 80 (10%) of the 835 non-ATC PFR's requested by employees resulted in the Regional Office decision being overturned. The comparable figure for agency requests was 26 out of 80 (33%).

- For non-ATC PFR's that were granted, the Board more frequently overturned Regional Office decisions for PFR's requested by employees than for those requested by agencies. The Board overturned 80 of 113 (71%) of the Regional Office decisions for non-ATC employee PFR's granted compared to 26 of 58 (45%) for non-ATC agency PFR's granted.

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[2]The data used for this report were extracted from the Board's Case Tracking System, a computerized data base management system.

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- Ninety percent (748 of 832) of the ATC PFR's granted ended in final decisions whereby the Federal Aviation Administration prevailed and removals of the employees remained in force.

- Of the 916 non-ATC PFR's decided in FY 1983, agencies prevailed[3] more frequently (86% of all non-ATC PFR's decided) than employees (14% of all non-ATC PFR's decided). However, for the 171 non-ATC PFR's granted, employees prevailed more frequently (65% of non-ATC PFR's granted) than did agencies (35% of non-ATC PFR's granted).

- The average time to process an ATC PFR for cases decided in FY 1983 was 6 months. The average time to decide a non-ATC PFR was virtually unchanged from FY 1982 to FY 1983 (10.63 months vs. 10.61 months). Forty-three percent of the non-ATC PFR's were decided in seven months or less, up from 33 percent in FY 1982.

B. FINDINGS

In this section we will address the data under the following subheadings: **Number of PFR's Decided, Who Requested the Reviews, Petitions for Review Granted, Regional Office Decisions Left Unchanged and Number Overturned, Comparison of Success Rates for PFR's Granted at the Requests of Employees or Agencies,** and **Decision Times.** Where feasible, we have included the corresponding figures for fiscal year 1982 to illustrate changes which may have occurred from year to year.

Number of PFR's Decided

The total number of PFR's decided by the Board increased substantially from FY 1982 to FY 1983--1,192 PFR's[4] were decided in FY 1982 compared to 3,881 PFR's decided in FY 1983. The vast majority of the FY 1983 PFR's involved ATC appeals (covering 2,965 former Air Traffic Controllers), while the remaining 916 involved non-ATC appeals (see Exhibits 21 and 22).

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[3]An agency prevailed when the Board did not grant an employee PFR, leaving intact a Regional Office decision favorable to the agency, when the Board granted an employee PFR and subsequently affirmed a Regional Office decision favorable to the agency, or when the Board granted an agency PFR and overturned a Regional Office decision which was unfavorable to the agency.

An employee prevailed when the Board did not grant an agency PFR, leaving intact a Regional Office decision favorable to the employee, when the Board granted an agency PFR and subsequently affirmed a Regional Office decision favorable to the employee, or when the Board granted an employee PFR and overturned a Regional Office decision which was unfavorable to the employee.

[4]For purposes of this report, only those PFR's which were fully entered into the Case Tracking System are analyzed. Although 2,008 PFR's were decided in FY 1982, 816 of those PFR's had insufficient data elements entered into the Case Tracking System. Thus, the 1,192 figure for PFR's decided in FY 1982 is used for analysis.

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Exhibit 21

BOARD DECISIONS[1] FOR AIR TRAFFIC CONTROLLER PETITIONS FOR REVIEW
IN FY 1983,
BY TYPE OF PETITIONER

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted such that the Agency Prevailed[2]	Percent of PFR's Granted such that the Agency Prevailed
Agency Only	228	202	89%	191	95%
Employee Only	2,515	471	19%	401	85%
Agency and Employee	222	159	72%	156	98%
TOTAL	2,965[3]	832	28%	748	90%

[1]All references to ATC decisions or PFR's in this report represent the number (or percent) of PFR's which were finally decided, either individually or as part of a consolidation, by the Board in FY 1983.

[2]The dominant issue addressed in ATC Petitions for Review was whether or not an employee's removal would be sustained on appeal or whether that employee could return to work as an Air Traffic Controller. A secondary issue dealt with the legitimacy of suspensions associated with the removals. In a number of instances, the FAA filed a PFR on the outcome of the suspension issue, while the employee filed a PFR on the removal issue. For the purposes of this report, we define that the agency prevailed whenever the outcome of the final decision resulted in the employee's removal being sustained. The figures in this column do not reflect the number of times the FAA prevailed due to appellants' PFR's being denied.

[3]This figure represents the total number of PFR's which were finally decided by the Board in FY 1983. Although over 5,000 appellants originally petitioned the Board in FY 1983, a number of them subsequently withdrew their PFR's before they could be adjudicated by the Board. Final action on other appeals was not taken until FY 1984.

Exhibit 22

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW
IN FY 1982 AND FY 1983,
BY TYPE OF PETITIONER

FY 1983

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted that overturned Regional Office Decisions 1/	Percent of PFR's Granted that overturned Regional Office Decisions
Agency	80	58	72%	26	45%
Employee	835	113	14%	80	71%
Other	1	0	0%	0	0%
TOTAL	**916**	171	**19%**	106	**62%**

FY 1982

Type of Petitioner	Number of Petitions For Review Decided	Number of Petitions For Review Granted	Percent Granted	Number of PFR's Granted that overturned Regional Office Decisions	Percent of PFR's Granted that overturned Regional Office Decisions
Agency	168	89	53%	66	74%
Employee	1019	178	17%	171	96%
Other	5	1	20%	1	100%
TOTAL	**1192**	**268**	**22%**	**238**	**89%**

1/ In the text of this report, the Regional Office decision is considered to have been overturned when the Board grants the PFR and reverses, remands, mitigates, or vacates the decision.

Exhibit 23 shows the breakdown on non-ATC PFR's by type of appeal. While agencies requested PFR's primarily in adverse action appeals, employees requested across a wide spectrum of appeals, with a concentration in adverse action and reduction-in-force appeals.

The number of non-ATC PFR's decided by the Board dropped by 23 percent from FY 1982 to FY 1983 (from 1,192 to 916) (see Exhibit 22). An explanation for this decrease is that the Board's resources for processing PFR's in FY 1983 were significantly affected by the processing and adjudication of the voluminous ATC PFR's.

Who Requested The Reviews

For both ATC and non-ATC appeals, most of the PFR's that the Board decided had been requested by employees. Exhibit 21 shows the number of ATC PFR's that were decided at the Board level by type of petitioner. The overwhelming majority (2,515 of 2,965) of the ATC PFR's decided by the Board were requested by employees. The remaining PFR's were split between agency requests and requests by both the agencies and employees. Exhibit 22 shows the non-ATC Board decisions on PFR's for FY 1983 and FY 1982 by type of petitioner. In FY 1983 the bulk of these non-ATC PFR's were requested by employees (835 out of 916) and virtually all of the remainder by agencies.[5] The same was true for FY 1982--employees requested 1,019 of 1,192 PFR's decided. [No ATC PFR's were decided by the Board in FY 1982, since these appeals were still being processed at the Regional Offices.]

Petitions for Review Granted

Exhibit 21 shows that, overall, 832 of 2,965 (28%) of the ATC Petitions for Review were granted. The majority (471) of ATC PFR's granted were requested by employees. In proportion to numbers requested, agency PFR's were granted more frequently than were employee PFR's [89% (202 of 228) vs. 19% (471 of 2,515)], while cases in which both the agency and employee petitioned for review were granted 72 percent of the time (159 of 222).

Exhibit 22 shows that the Board granted 171 (19%) of the 916 non-ATC PFR's requested by both parties, down from 22 percent (268 of 1,192) in FY 1982. Although a greater number of employee PFR's (113) were granted than were agency PFR's (58), agencies were proportionately more successful in having their non-ATC PFR's granted by the Board than were employees -- 72 percent (58 out of 80) of agency PFR's requested were granted in FY 1983, while 14 percent (113 out of 835) of employee PFR's requested were granted in FY 1983 (see Exhibit 22). The comparable figures in FY 1982 were 53 percent and 17 percent, respectively.

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[5]One PFR was ascribable to either a Board reopening on its own motion or a petition by either the Director of the Office of Personnel Management or the Special Counsel.

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Exhibit 23

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW
IN FY 1983,
BY TYPE OF APPEAL AND TYPE OF PETITIONER

Type of Appeal	Agency Request	Employee Request	Other Request	Total
Adverse Action	65	419	0	484
Reduction in Force	7	113	0	120
Disability Retirement	0	80	0	80
Competence	5	30	0	35
Termination of Probationers	1	60	0	61
Nondisability Retirement	2	41	0	43
Miscellaneous	0	52	0	52
Other 1/	0	40	1	41
TOTAL	80	835	1	916

1/Includes appeals for performance-based actions (under Part 432 of Volume 5 of the Code of Federal Regulations).

Regional Office Decisions Left Unchanged and Number Overturned

When issuing a final decision in a case, the Board may either: 1) leave the Regional Office decision unchanged by not granting the PFR or by granting the PFR and affirming the Regional Office decision; or 2) overturn the Regional Office decision by granting the PFR and reversing, remanding, mitigating, or vacating the decision.

Figure 5 provides a visual comparison of the proportions of Regional Office decisions for all non-ATC PFR's decided that were left unchanged by the Board and those that were overturned for FY 1982 and FY 1983. It shows that Regional Office decisions for all parties were overturned by the Board substantially less often in FY 1983 than in FY 1982. The Board granted the PFR's and overturned Regional Offices' decisions in 12 percent (106 of 916) of the non-ATC PFR's decided in FY 1983, down from 20 percent (238 of 1,192) in FY 1982. In other words, the Regional Offices' decisions were affirmed in 88 percent[6] of all the non-ATC PFR's decided, up from 80 percent[7] in FY 1982.

Exhibit 22 shows that of the 171 non-ATC PFR's granted, the Board also overturned Regional Office decisions less often in FY 1983 than in FY 1982. The Board overturned Regional Offices' decisions in 62 percent (106 of 171) of the non-ATC PFR's granted to any party in FY 1983, down from 89 percent (238 of 268) in FY 1982.

Figure 6 presents, for FY 1983 and FY 1982, the overall results of non-ATC PFR's requested by employees, and Figure 7 presents the comparable results for non-ATC PFR's requested by agencies. As can be seen in Figure 6 , 10 percent[8] (80 of 835) of employee requests for PFR's in FY 1983 resulted in the PFR's being granted and the Regional Offices' decisions being overturned, down from 16 percent in FY 1982. The comparable figure for agency non-ATC PFR requests in FY 1983, seen in Figure 7, was 33 percent (26 of 80), down from 39 percent in FY 1982. Figure 6 also shows that 90 percent of employee requests for PFR's in FY 1983 resulted in the Regional Offices' decisions left unchanged, either because the PFR's were not granted (86%) or because the PFR's were granted but the Regional Offices' decisions were affirmed by the Board (4%).

For non-ATC PFR's that were granted, the Board more frequently overturned Regional Office decisions for PFR's requested by employees than for those requested by agencies. Referring once again to Exhibit 22, we see that in FY 1983 the Board overturned 80 of 113 (71%) of the Regional Office decisions for non-ATC PFR's requested by employees and subsequently granted by the Board.

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[6]In FY 1983, 81 percent of the non-ATC PFR's were not granted, leaving the Regional Offices' decisions unchanged. An additional 7 percent of the non-ATC PFR's were granted and affirmed the Regional Offices' decisions.

[7]In FY 1982, 75 percent of the non-ATC PFR's were not granted. An additional 2 percent of the non-ATC PFR's were granted and affirmed the Regional Offices' decisions.

[8]Although the overall "success rate" for employees at the Board was only 10 percent, it should be noted that the employee "success rate" at the Regional Offices was significantly higher. Of the appeals decided on the merits at the Regional Offices, 26 percent reversed or mitigated agency actions.

FIGURE 5

BOARD DECISIONS ON ALL NON-ATC PETITIONS FOR REVIEW, BY OUTCOME

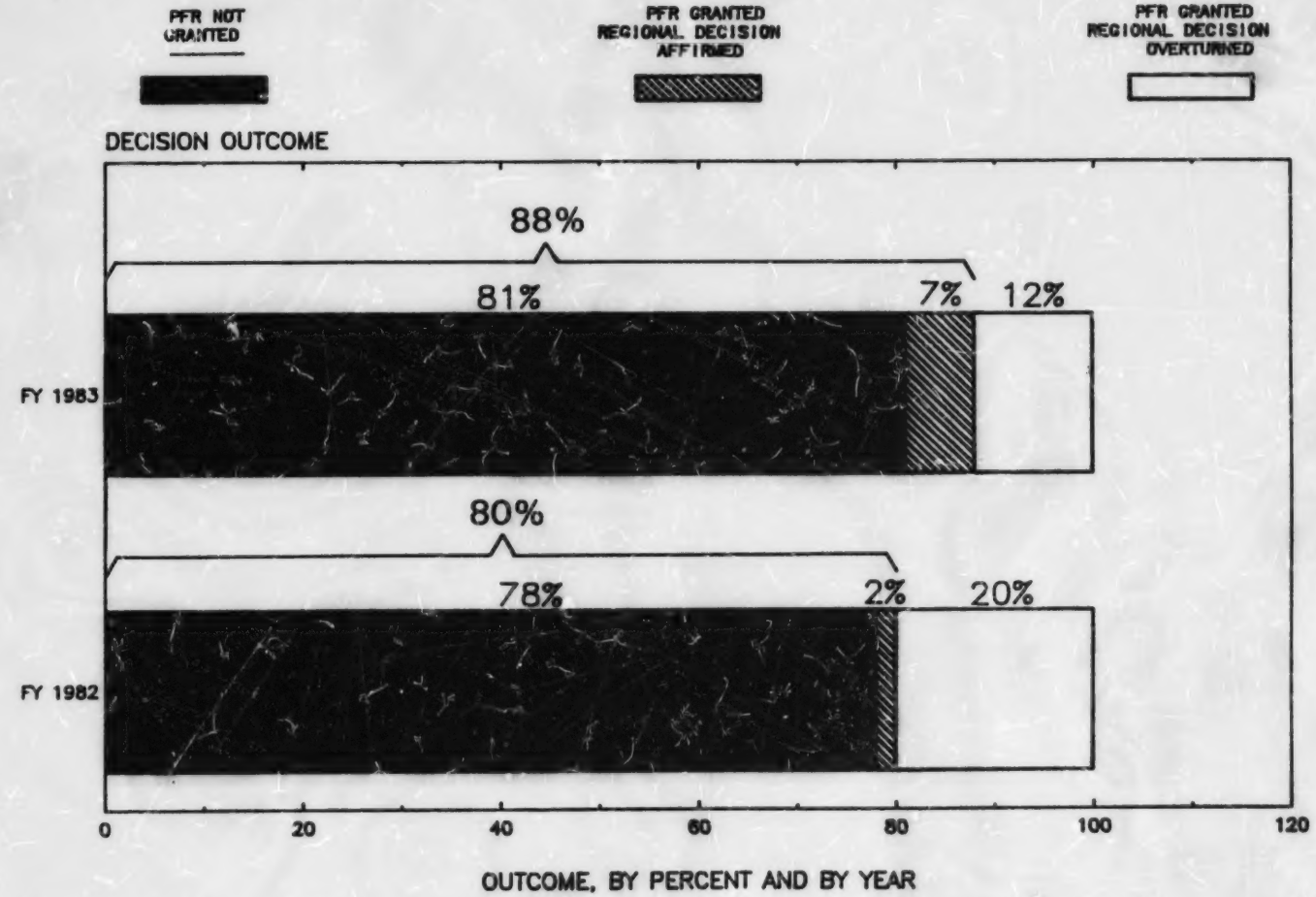


FIGURE 6

BOARD DECISIONS ON NON-ATC EMPLOYEE PFRs ONLY, BY OUTCOME

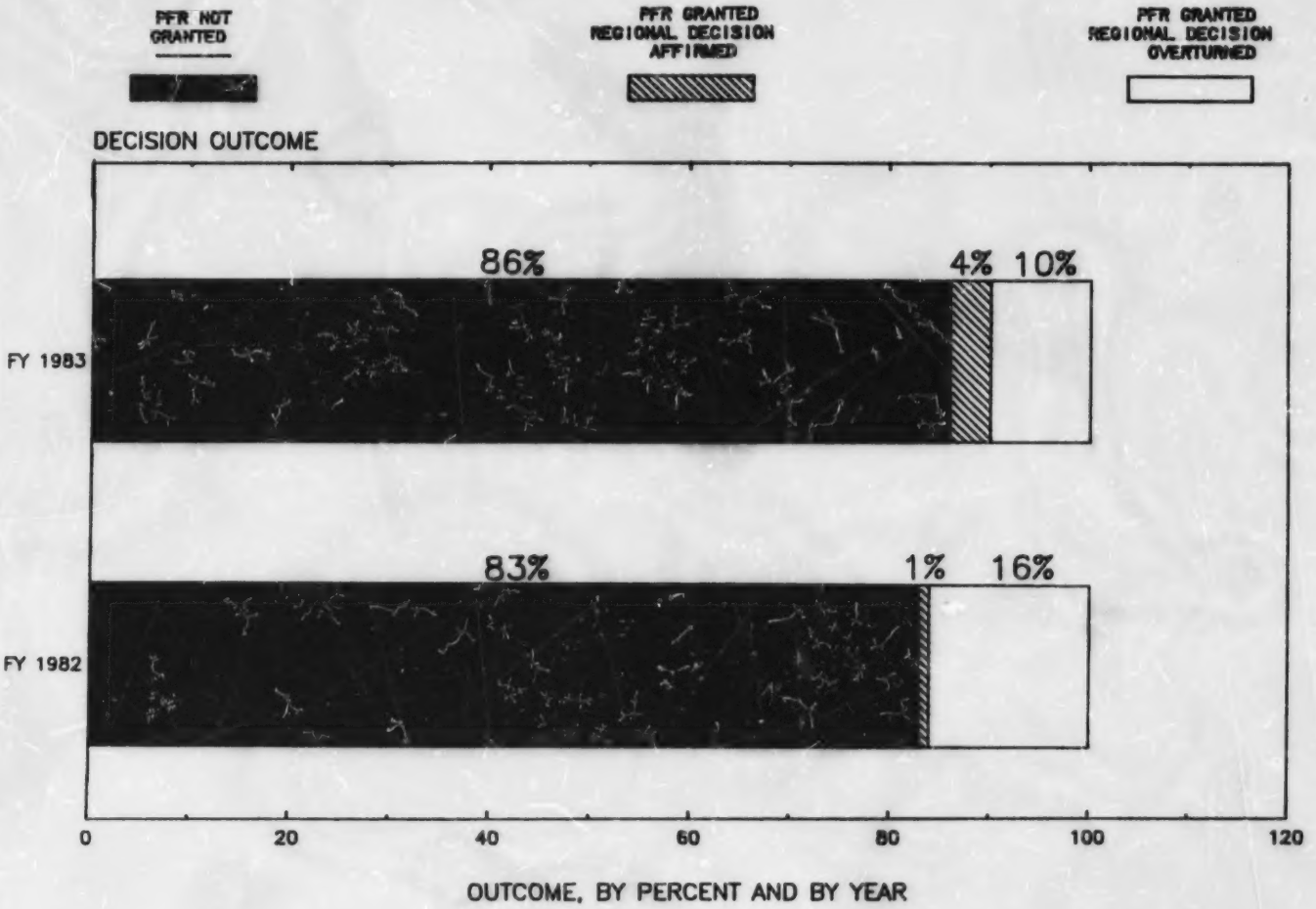
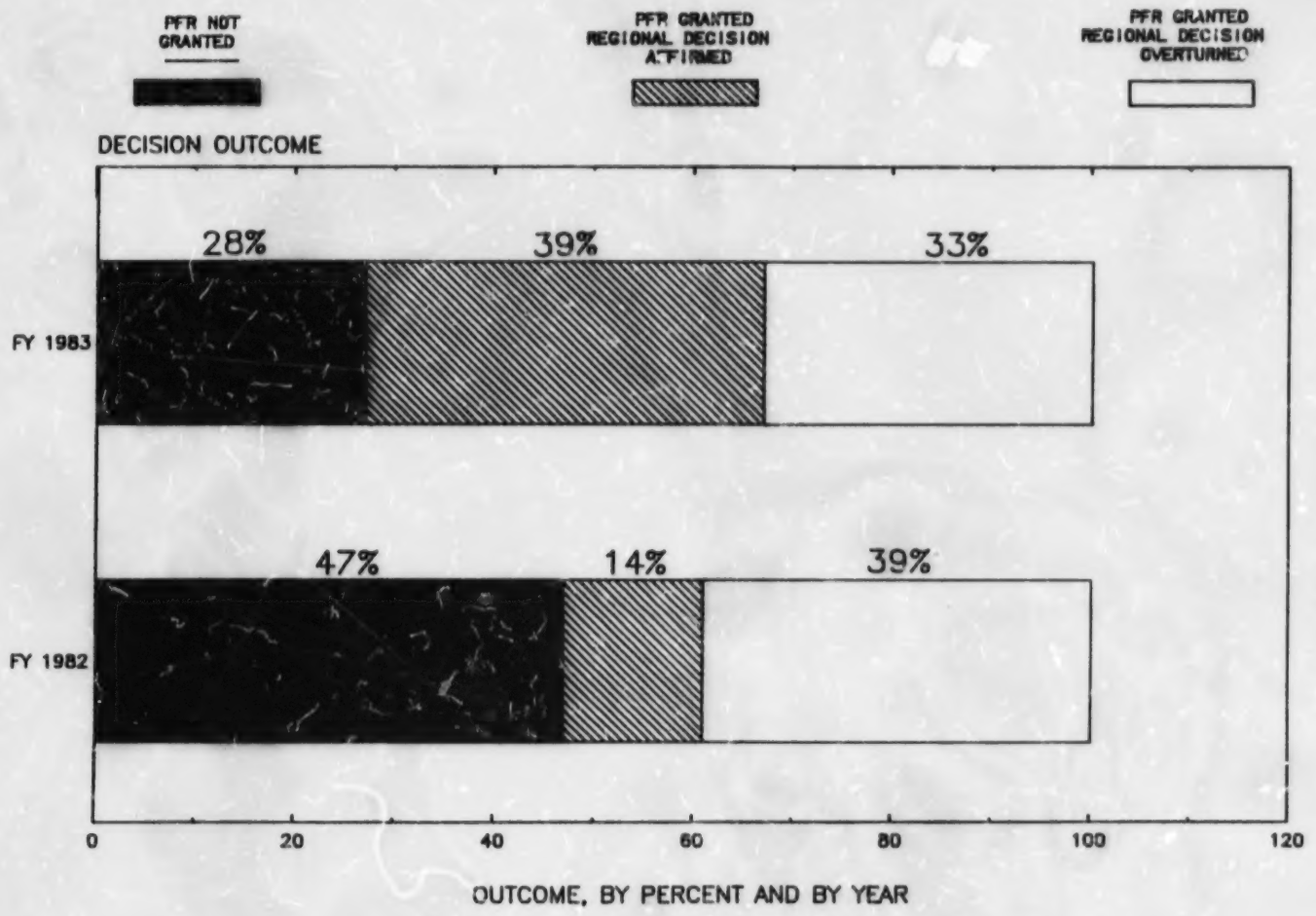


FIGURE 7

BOARD DECISIONS ON NON-ATC AGENCY PFRs ONLY, BY OUTCOME



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This compares with the Board overturning 26 of 58 (45%) of the Regional Office decisions for non-ATC agency PFR's granted. In FY 1982, the comparable figures were 96 percent for employee PFR's granted and 74 percent for agency PFR's granted.

Comparison of "Success Rates" for PFR's Granted at the Requests of Employees or Agencies

The ultimate "success" of a party at the Board level is not necessarily dependent on the granting by the Board of that party's Petition for Review. For the purposes of this report, all parties who realized results favorable to them at the Board level are called "prevailing" parties.

The Federal Aviation Administration (FAA) prevailed whenever the final decision in an ATC Petition for Review resulted in the employee's removal remaining in force. Overall, as shown in Exhibit 21, the FAA prevailed in 90 percent (748 of 832) of the PFR's granted, and employees regained their jobs in the remaining 10 percent (84 of 832) of the PFR's granted. The most frequent result for ATC PFR's, therefore, was that the removals of the Air Traffic Controllers remained in force.

For non-ATC PFR's, an employee prevailed when any of the following possible results occurred: the Board decided not to grant a PFR filed by an agency, thereby letting a Regional Office decision in favor of the employee stand; the Board granted a PFR filed by an agency and decided not to overturn the decision of the Regional Office favorable to the employee; or, the Board granted a PFR filed by an employee and decided to overturn the Regional Office decision that had been favorable to the agency. An agency prevailed when any of the following results occurred: the Board decided not to grant a PFR filed by an employee, thereby letting a Regional Office decision in favor of the agency stand; the Board granted a PFR filed by an employee and decided not to overturn the Regional Office decision favorable to the agency; or, the Board granted a PFR filed by an agency and decided to overturn the Regional Office decision favorable to the employee.

For all non-ATC PFR's decided (916 PFR's), agencies were more likely to prevail at the Board level than were employees. Looking at the universe of all non-ATC PFR's requested by both agencies and employees, we find that agencies prevailed in 86 percent[9] of all non-ATC PFR's decided while employees prevailed in only 14 percent[10] (see Figure 8).

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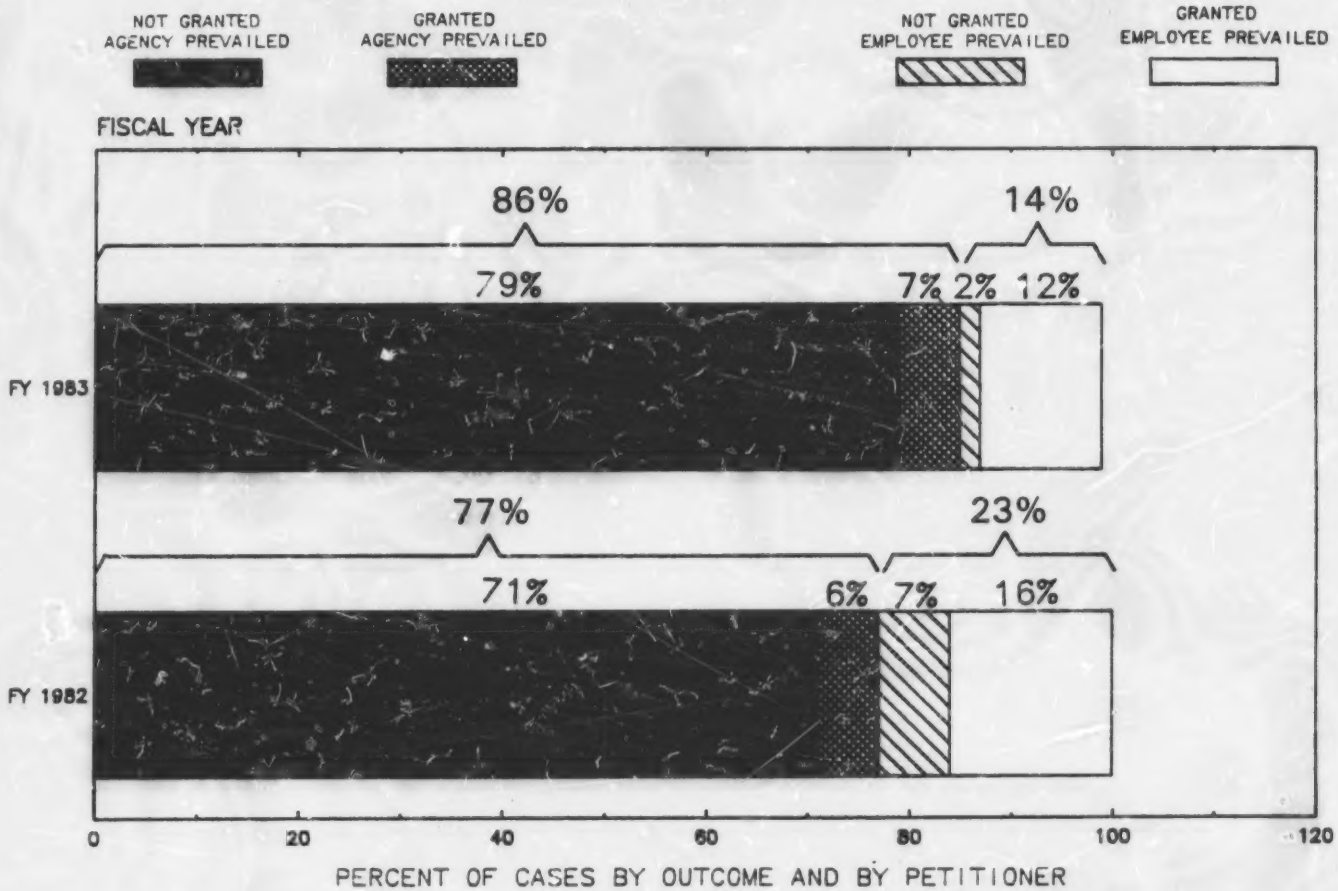
[9]Seventy-nine percent of the PFR's requested by any party which were not granted by the Board resulted in the agency prevailing because Regional Office decisions favorable to the agencies were left unchanged. Seven percent of the PFR's requested by any party which were granted by the Board resulted in the agency prevailing because a Regional Office decision unfavorable to the agency was overturned or because a Regional Office decision favorable to the agency was left unchanged.

[10]Twelve percent of the PFR's requested by any party which were granted by the Board resulted in the employee prevailing because a Regional Office decision unfavorable to the employee was overturned or because a Regional Office decision favorable to the employee was left unchanged. Two percent of the PFR's requested by any party which were not granted by the Board resulted in the employee prevailing because Regional Office decisions favorable to the employee were left unchanged.

FIGURE 8

BOARD DECISIONS FOR NON-ATC PETITIONS FOR REVIEW, BY PETITIONER AND BY OUTCOME



However, if we examine the data for the smaller universe of all non-ATC PFR's which were granted (171 PFR's), we find that employees and not agencies prevailed in most cases--employees prevailed in 65 percent of all PFR's granted in FY 1983 (down from 72 percent of all PFR's granted in FY 1982).[11] Two factors contributed to these results. First, employees requested the large majority of the PFR's and had most of the PFR's actually granted--66 percent in both FY 1983 and FY 1982.[12] Second, employees prevailed (i.e., the Regional Office decision was overturned in favor of the employee) in the majority of the PFR's granted at their request (71% in FY 1983 and 96% in FY 1982) and in roughly one-half and one-quarter (55% in FY 1983 and 26% in FY 1982) of the PFR's granted at agencies' requests (see Exhibit 22).

Decision Times

Exhibit 24 shows that the average time to decide an ATC PFR was 6.06 months. Petitions for Review which were denied were decided approximately one month faster than PFR's which were granted (5.80 vs. 6.72 months, respectively).

The average time to decide a non-ATC PFR was virtually unchanged from FY 1982 to FY 1983 (10.63 months vs. 10.61 months). Exhibit 25 shows the number of PFR's, the percent of PFR's, and the cumulative percent of PFR's decided in time intervals measured in months for PFR's decided in FY 1983.[13] Forty-three percent of the PFR's required 7 or fewer months to decide, up from 33 percent in FY 1982.[14]

As shown in Exhibit 26, the Board required an average of 9.66 months to decide a non-ATC Petition for Review which was denied, and 17.00 months to decide a non-ATC Petition for Review which was granted. The comparable figures for FY 1982 were 9.92 months and 14.06 months, respectively.

As shown in Exhibit 27, the average decision time for non-ATC PFR's differed markedly by the type of appeal. On average, termination of probationers appeals were decided most rapidly, with reduction-in-force appeals taking the longest amount of time to decide. In comparison to FY 1982, the average PFR decision time increased slightly for adverse action appeals (from 11.28 to 11.77 months) and increased at a greater rate for reduction-in-force appeals (from 10.45 to 13.03 months).

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[11] Employees prevailed in 112 out of the total of 171 PFR's granted in FY 1983 and in 194 out of the total of 268 PFR's granted in FY 1982 (see Exhibit 22).

[12] Of the total of 171 PFR's granted in FY 1983, 113 were employee PFR's, and of the 268 PFR's granted in FY 1982, 178 were employee PFR's (see Exhibit 22).

[13] For 1982 figures, see Study of MSPB Appeals Decisions for FY 1982, p. 48.

[14] Ibid.

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Exhibit 24

AVERAGE DECISION TIMES AT THE BOARD FOR AIR TRAFFIC CONTROLLER PETITIONS FOR REVIEW IN FY 1983, BY OUTCOME OF PETITION FOR REVIEW

Outcome of Petition for Review	Average Decision Time (Months) 1/
Petitions Denied	5.80
Petitions Granted	6.72
OVERALL AVERAGE	6.06

1/ For the purpose of analysis, 30 days = 1 month.

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Exhibit 25

DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW IN FY 1983

Decision Time (Months) 1/	Number of PFR's	Percent of PFR's	Cumulative Percent of of PFR's
0 - .99	0	-	-
1 - 1.99	9	0.98%	0.98%
2 - 2.99	51	5.57%	6.55%
3 - 3.99	85	9.28%	15.83%
4 - 4.99	75	8.19%	24.02%
5 - 5.99	59	6.44%	30.46%
6 - 6.99	54	5.90%	36.36%
7 - 7.99	59	6.44%	42.80%
8 +	524	57.20%	100.00%
TOTAL	916	100.00%	

1/ For the purpose of analysis, 30 days = 1 month.

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Exhibit 26

AVERAGE DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW
IN FY 1982 AND FY 1983,
BY OUTCOME OF PETITION FOR REVIEW

Outcome of Petition for Review	FY 1983 Average Decision Time (Months)[1/]	FY 1982 Average Decision Time (Months)
Petitions Denied	9.66	9.92
Petitions Granted	17.00	14.06
OVERALL AVERAGE	10.61	10.63

1/ For the purpose of analysis, 30 days = 1 month.

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Exhibit 27

AVERAGE DECISION TIMES AT THE BOARD FOR NON-ATC PETITIONS FOR REVIEW IN FY 1982 AND FY 1983, BY TYPE OF APPEAL

Outcome of Petition for Review	FY 1983 Average Decision Time (Months)[1]	FY 1982 Average Decision Time (Months)
Adverse Action	11.77	11.28
Reduction in Force	13.03	10.45
Disability Retirement	7.17	9.37
Competence	10.97	11.04
Termination of Probationers	6.63	6.81
Nondisability Retirement	7.77	8.35
Miscellaneous	7.60	6.31
Other[2]		
OVERALL AVERAGE	10.61	10.63

[1]For the purpose of analysis, 30 days = 1 month.

[2]Includes appeals for performance-based (Part 432) actions.

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C. CONCLUDING OBSERVATIONS

The summary view of the processing of PFR's at the Board for FY 1983 is as follows:

The Board decided PFR's covering 2,965 Air Traffic Controllers and 916 non-ATC PFR's in FY 1983. The total number of 3,881 PFR's decided in FY 1983 was a dramatic increase over the total of 1,192 PFR's decided in FY 1982.

The Board granted 28 percent of all the ATC PFR's decided and 19 percent of all the non-ATC PFR's decided. Employee PFR's, both ATC and non-ATC, were granted proportionately less frequently than were agency PFR's.

The Board effectively affirmed a greater proportion (88%) of non-ATC Regional Office decisions in FY 1983 than in FY 1982 (80%). In FY 1983, ten percent (80 out of 835) of employee non-ATC PFR requests and 33 percent (26 out of 80) of agency non-ATC PFR requests resulted both in the PFR being granted and the Regional Office decision being overturned. FY 1982 figures were 16 percent for employees and 39 percent for agencies. In FY 1983, the Board overturned Regional Office decisions for non-ATC PFR's requested by employees more frequently than for PFR's requested by agencies. The Board overturned 80 out of 113 (71%) of the Regional Office decisions for non-ATC employee PFR's granted compared to 26 out of 58 (45%) for non-ATC agency PFR's granted.

The Federal Aviation Administration prevailed (i.e., employee removals remained in force) in 90 percent of the ATC PFR's granted. Agencies prevailed more frequently than employees when we examine the larger group of all non-ATC PFR's decided in FY 1983, but employees prevailed more frequently for the smaller group of non-ATC PFR's which were actually granted.

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APPENDIX 1

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APPENDIX 1

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY REGIONAL OFFICE AND TYPE OF APPEAL

REGIONAL OFFICE	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	NONDISABILITY MISCELLANEOUS	NONDISABILITY RETIREMENT	NONDISABILITY OTHER	TOTAL
ATLANTA									
Number Decided	499	235	178	66	15	103	29	90	1215
Number Reached on the Merits	271	179	96	4	7	0	20	39	616
Number Reversed/ Mitigated	39	62	10	2	1	0	2	8	124
Percent Reversed/ Mitigated	14%	35%	10%	50%	14%	0%	10%	21%	20%
BOSTON									
Number Decided	130	62	27	19	12	3	11	28	292
Number Reached on the Merits	79	53	15	2	3	0	8	14	174
Number Reversed/ Mitigated	18	40	1	0	2	0	0	8	69
Percent Reversed/ Mitigated	23%	75%	7%	0%	67%	0%	0%	57%	40%
CHICAGO									
Number Decided	361	177	71	64	9	38	20	51	791
Number Reached on the Merits	188	141	45	0	2	0	15	18	409
Number Reversed/ Mitigated	29	76	7	0	0	0	1	5	118
Percent Reversed/ Mitigated	15%	54%	16%	0%	0%	0%	7%	28%	29%
DALLAS									
Number Decided	372	171	89	62	22	49	21	37	823
Number Reached on the Merits	215	142	30	4	11	1	13	18	434
Number Reversed/ Mitigated	31	70	2	0	0	0	0	4	107
Percent Reversed/ Mitigated	14%	49%	7%	0%	0%	0%	0%	22%	25%

APPENDIX 1 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY REGIONAL OFFICE AND TYPE OF APPEAL

REGIONAL OFFICE	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
DENVER									
Number Decided	110	51	47	23	8	24	14	22	299
Number Reached on the Merits	60	44	19	2	7	3	10	17	162
Number Reversed/ Mitigated	15	16	1	0	1	0	0	4	37
Percent Reversed/ Mitigated	25%	36%	5%	0%	14%	0%	0%	24%	23%
NEW YORK									
Number Decided	348	108	44	55	18	79	19	66	737
Number Reached on the Merits	161	85	23	1	4	3	16	11	304
Number Reversed/ Mitigated	44	47	4	0	0	1	1	0	97
Percent Reversed/ Mitigated	27%	55%	17%	0%	0%	33%	6%	0%	32%
PHILADELPHIA									
Number Decided	367	139	88	41	21	56	14	42	768
Number Reached on the Merits	190	112	63	1	10	0	7	17	400
Number Reversed/ Mitigated	26	47	16	1	1	0	0	3	94
Percent Reversed/ Mitigated	14%	42%	25%	100%	10%	0%	0%	18%	24%
SEATTLE									
Number Decided	160	49	61	21	9	3	5	33	341
Number Reached on the Merits	48	27	28	1	1	0	3	11	119
Number Reversed/ Mitigated	8	17	0	1	0	0	0	3	29
Percent Reversed/ Mitigated	17%	63%	0%	100%	0%	0%	0%	27%	24%

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APPENDIX 1 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY REGIONAL OFFICE AND TYPE OF APPEAL

REGIONAL OFFICE	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
SAN FRANCISCO									
Number Decided	593	155	263	90	20	0	46	79	1246
Number Reached on the Merits	263	122	206	2	7	0	30	38	668
Number Reversed/ Mitigated	37	56	172	1	0	0	3	6	275
Percent Reversed/ Mitigated	14%	46%	83%	50%	0%	0%	10%	16%	41%
ST. LOUIS									
Number Decided	154	79	22	46	7	25	5	19	357
Number Reached on the Merits	95	59	12	4	2	0	2	11	185
Number Reversed/ Mitigated	14	36	4	0	0	0	0	2	56
Percent Reversed/ Mitigated	15%	61%	33%	0%	0%	0%	0%	18%	30%
WASHINGTON									
Number Decided	356	119	490	38	41	64	22	77	1207
Number Reached on the Merits	221	90	282	0	22	1	19	46	681
Number Reversed/ Mitigated	25	33	12	0	2	0	8	2	82
Percent Reversed/ Mitigated	11%	37%	4%	0%	9%	0%	42%	4%	12%
TOTAL									
Number Decided	3450	1345	1380	525	182	444	206	544	8076
Number Reached on the Merits	1791	1054	819	21	76	8	143	240	4152
Number Reversed/ Mitigated	286	500	229	5	7	1	15	45	1088
Percent Reversed/ Mitigated	16%	47%	28%	24%	9%	13%	10%	19%	26%

APPENDIX 2

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APPENDIX 2

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY AGENCY AND TYPE OF APPEAL

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
AIR FORCE									
Number Decided	250	0	22	38	15	46	0	21	392
Number Reached on the Merits	156	0	14	5	9	0	0	11	195
Number Reversed/ Mitigated	15	0	2	0	0	0	0	1	18
Percent Reversed/ Mitigated	10%	0%	14%	0%	0%	0%	0%	9%	9%
AGRICULTURE									
Number Decided	96	0	96	23	11	18	0	8	252
Number Reached on the Merits	50	0	53	3	4	2	0	3	115
Number Reversed/ Mitigated	9	0	10	0	0	0	0	0	19
Percent Reversed/ Mitigated	18%	0%	19%	0%	0%	0%	0%	0%	17%
ARMY									
Number Decided	354	0	69	92	21	52	0	73	661
Number Reached on the Merits	204	0	36	5	9	1		41	296
Number Reversed/ Mitigated	33	0	15	1	4	0	0	5	58
Percent Reversed/ Mitigated	16%	0%	42%	20%	44%	0%	0%	12%	20%
COMMERCE									
Number Decided	22	0	206	1	2	3	0	7	241
Number Reached on the Merits	8	0	162	0	1	0	0	4	175
Number Reversed/ Mitigated	1	0	3	0	0	0	0	0	4
Percent Reversed/ Mitigated	13%	0%	2%	0%	0%	0%	0%	0%	2%

APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY AGENCY AND TYPE OF APPEAL

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
DOD (Miscellaneous)									
Number Decided	92	0	11	18	17	8	0	17	163
Number Reached on the Merits	63	0	2	2	5	0	0	8	80
Number Reversed/ Mitigated	9	0	0	1	1	0	0	1	12
Percent Reversed/ Mitigated	14%	0%	0%	50%	20%	0%	0%	13%	15%
[redacted]									
Number Decided	7	0	40	0	2	7	0	5	61
Number Reached on the Merits	5	0	23	0	1	0	0	2	31
Number Reversed/ Mitigated	1	0	2	0	0	0	0	1	4
Percent Reversed/ Mitigated	20%	0%	9%	0%	0%	0%	0%	50%	13%
JUSTICE									
Number Decided	89	0	15	48	2	10	0	13	177
Number Reached on the Merits	48	0	4	1	0	0	0	6	59
Number Reversed/ Mitigated	13	0	1	1	0	0	0	1	16
Percent Reversed/ Mitigated	27%	0%	25%	100%	0%	0%	0%	17%	27%
LABOR									
Number Decided	27	0	24	1	1	9	0	8	70
Number Reached on the Merits	16	0	16	0	0	0	0	2	34
Number Reversed/ Mitigated	1	0	2	0	0	0	0	0	3
Percent Reversed/ Mitigated	6%	0%	13%	0%	0%	0%	0%	0%	9%

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APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY AGENCY AND TYPE OF APPEAL

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
HHS									
Number Decided	88	0	26	7	30	12	0	33	196
Number Reached on the Merits	53	0	7	0	18	0	0	21	99
Number Reversed/ Mitigated	8	0	0	0	1	0	0	3	12
Percent Reversed/ Mitigated	15%	0%	0%	0%	6%	0%	0%	14%	12%
HUD									
Number Decided	22	0	86	0	3	5	0	7	123
Number Reached on the Merits	10	0	63	0	1	0	0	4	78
Number Reversed/ Mitigated	3	0	3	0	0	0	0	0	6
Percent Reversed/ Mitigated	30%	0%	5%	0%	0%	0%	0%	0%	8%
INTERIOR									
Number Decided	74	0	274	10	4	20	0	15	397
Number Reached on the Merits	26	0	210	0	1	2	0	10	249
Number Reversed/ Mitigated	2	0	167	0	0	0	0	1	170
Percent Reversed/ Mitigated	8%	0%	80%	0%	0%	0%	0%	10%	68%
NAVY									
Number Decided	406	0	41	78	17	35	0	52	629
Number Reached on the Merits	218	0	15	2	4	0	0	24	263
Number Reversed/ Mitigated	38	0	1	1	0	0	0	4	44
Percent Reversed/ Mitigated	17%	0%	7%	50%	0%	0%	0%	17%	17%

APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC APPEALS
IN FY 1983,
BY AGENCY AND TYPE OF APPEAL

AGENCY	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
POST OFFICE									
Number Decided	921	0	3	7	3	62	0	100	1,096
Number Reached on the Merits	357	0	1	0	0	0	0	15	373
Number Reversed/ Mitigated	70	0	1	0	0	0	0	5	76
Percent Reversed/ Mitigated	20%	0%	100%	0%	0%	0%	0%	33%	20%
VA									
Number Decided	65	0	83	0	0	3	0	3	154
Number Reached on the Merits	35	0	53	0	0	0	0	0	88
Number Reversed/ Mitigated	8	0	4	0	0	0	0	0	12
Percent Reversed/ Mitigated	23%	0%	8%	0%	0%	0%	0%	0%	14%
[redacted]									
Number Decided	80	0	23	54	4	11	0	11	183
Number Reached on the Merits	49	0	13	1	2	0	0	4	69
Number Reversed/ Mitigated	6	0	2	0	0	0	0	3	11
Percent Reversed/ Mitigated	12%	0%	15%	0%	0%	0%	0%	75%	16%
[redacted]									
Number Decided	131	0	21	27	7	8	0	10	204
Number Reached on the Merits	64	0	16	0	4	0	0	3	87
Number Reversed/ Mitigated	13	0	1	0	0	0	0	0	14
Percent Reversed/ Mitigated	20%	0%	6%	0%	0%	0%	0%	0%	16%

APPENDIX 2 (Cont'd)

REGIONAL OFFICE DECISIONS FOR ALL NON-ATC FOR FY 1983,
BY AGENCY AND TYPE OF APPEAL

	ADVERSE ACTION	DISABILITY RETIREMENT	REDUCTION IN FORCE	TERMINATION OF PROBATIONERS	COMPETENCE	MISCELLANEOUS	NONDISABILITY RETIREMENT	OTHER	TOTAL
VETERANS ADMINISTRATION									
Number Decided	291	0	11	81	10	48	0	23	464
Number Reached on the Merits	166	0	4	1	5	2	0	6	184
Number Reversed/ Mitigated	27	0	0	0	1	0	0	1	29
Percent Reversed/ Mitigated	16%	0%	0%	0%	20%	0%	0%	17%	15%
OTHER									
Number Decided	154	0	209	15	13	32	0	18	441
Number Reached on the Merits	82	0	49	1	3	0	0	8	143
Number Reversed/ Mitigated	8	0	9	1	0	0	0	0	18
Percent Reversed/ Mitigated	10%	0%	18%	100%	0%	0%	0%	0%	13%
UNAVAILABLE									
Number Decided	236	0	112	24	17	46	0	22	457
Number Reached on the Merits	142	0	72	0	9	0	0	9	232
Number Reversed/ Mitigated	18	0	6	0	0	0	0	0	24
Percent Reversed/ Mitigated	13%	0%	8%	0%	0%	0%	0%	0%	7%
OPM									
Number Decided	45	1,345	88	1	3	9	206	98	1,715
Number Reached on the Merits	39	1,054	6	0	0	1	143	59	1,302
Number Reversed/ Mitigated	3	500	0	0	0	1	15	19	538
Percent Reversed/ Mitigated	8%	47%	0%	0%	0%	100%	10%	32%	41%
TOTAL									
Number Decided	3,450	1,345	1,380	525	182	444	206	544	8,076
Number Reached on the Merits	1,791	1,054	819	21	76	8	143	240	4,152
Number Reversed/ Mitigated	286	500	229	5	7	1	15	45	1,088
Percent Reversed/ Mitigated	16%	47%	28%	24%	9%	13%	10%	19%	26%

APPENDIX 3

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SECTION 4

[illegible] REGIONAL OFFICES AND CORRESPONDING JURISDICTIONS DURING FY 1983*

Location	Corresponding Jurisdictions
ATLANTA REGIONAL OFFICE 1375 Peachtree Street, N.E. 3rd Fl., North Wing Atlanta, Georgia 30309 404/881-3631	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
BOSTON REGIONAL OFFICE 150 Causeway Street, Room 1122 Boston, Massachusetts 02114 617/223-2556	Connecticut, Maine, Vermont, Massachusetts, New Hampshire, and Rhode Island
CHICAGO REGIONAL OFFICE Kluczynski Federal Bldg. 230 South Dearborn St. Chicago, Illinois 60604 312/353-2923	Illinois, Indiana, Michigan, Minnesota, Wisconsin, and Ohio
DALLAS REGIONAL OFFICE 1100 Commerce St., Rm. 7B20 Dallas, Texas 75242 214/767-0555	Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
DENVER REGIONAL OFFICE 730 Simms St., Rm. 301 Golden, Colorado 80401 303/234-2710	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
NEW YORK REGIONAL OFFICE New Federal Bldg. 26 Federal Plaza, Rm. 2341 New York, New York 10278 212/264-2272	New Jersey, New York, Puerto Rico, and the Virgin Islands
PHILADELPHIA REGIONAL OFFICE U.S. Customhouse, Rm. 501 Second and Chestnut Streets Philadelphia, Pennsylvania 19106 215/597-9960	Camden County (New Jersey), Delaware, Maryland, Virginia, Pennsylvania, and West Virginia

*This listing accurately reflects the jurisdictional alignment in effect in FY 1983. The jurisdictions of a number of the Regional Offices have since been changed.

AVAILABLE

ST. LOUIS REGIONAL OFFICE 1520 Market St., Rm. 1740 St. Louis, Missouri 63103 314/425-4295	Iowa, Kansas, Missouri, Nebraska, and St. Clair and Madison Counties in Illinois
SAN FRANCISCO REGIONAL OFFICE 525 Market St., Rm. 2800 San Francisco, California 94105 415/974-9703	California, Arizona, Hawaii, Nevada, and the Pacific Ocean Area
SEATTLE REGIONAL OFFICE Federal Building, Rm. 1840 915 Second Avenue Seattle, Washington 98174 206/442-0394	Alaska, Idaho, Oregon, and Washington
WASHINGTON, D.C. REGIONAL OFFICE 5203 Leesburg Pike, Suite 1109 Falls Church, Virginia 22041 703/756-6250	Washington, D.C. Metropolitan Area, all overseas areas not otherwise covered

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APPENDIX 4

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APPENDIX 4

SCOPE OF MSPB APPELLATE JURISDICTION[1]

Appellate jurisdiction concerns those specified cases where actions within an agency have been taken. These include:

- Employment practices administered or ordered by the Office of Personnel Management (OPM);
- Priority consideration for restoration of excepted service employees to duty following recovery or partial recovery from a compensable injury;
- Under certain conditions, termination of probationers and assignment of probationary managers and supervisors to nonmanagerialor nonsupervisory positions;
- Conversions to the Senior Executive Service (SES);
- Denial of reemployment rights;
- Reductions-in-force;
- Denial of reemployment or reinstatement rights;
  -Executive agency transfer
  -International organization transfer
  -Foreign Assistance Act transfer
  -After service in the Economic Stabilization Program
  -After service under the Indian Self-Determination Act in Tribal Organizations
- Restoration rights after military service or recovery from injury or disability;
- Removal or reduction in grade for unacceptable performance;
- Denial of within grade salary increase;
- Suitability disqualifications;
- Adverse actions;
- Adverse actions in the SES;
- Legal retirement determinations;

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[1]This listing is provided as informative background only and should not be taken as an authoritative statement for legal purposes. A more detailed exposition is found in Title 5, United States Code, and Title 5, United States Code of Federal Regulations, or in the Board's pamphlet titled "Appeal Rights fand Procedures."

- Disability retirement determinations;
- Recovery of annuity overpayment;
- Reductions-in-force of SES members;
- Separations due to medical disqualification or involuntary retirement of air traffic controllers;
- Actions otherwise appealable to the Board involving an allegation of discrimination.

NOTE: Where there is a collective bargaining agreement, appellant jurisdiction will be affected; appellants can be referred to their agreements and related materials for specific guidance.

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APPENDIX 5

GLOSSARY

Types of Cases

Adverse Action - A removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

Competence - Denial of a within-grade pay increase based on an agency determination that an employee is not performing at an acceptable level beyond that needed for retention at the present grade and step.

Disability Retirement - An annuity paid to an employee who is under the retirement system, who has completed 5 years of civilian service, and who has become disabled for useful and efficient service because of disease or injury not the result of the employee's "vicious habits, intemperance, or willful misconduct."

Miscellaneous - Cases not fitting any other case category, for which jurisdiction must be decided.

Other - Cases dealing with a wide variety of issues which are legitimately under the Board's jurisdiction but occur so infrequently that they do not warrant separate statistical analysis.

Performance - Reduction in grade or removal of an employee based solely on unacceptable performance. This is distinguished from a competence case which deals with the denial of a within-grade pay increase.

Reduction in Force - A personnel action that may be required due to a lack of work or funds, changes resulting from reorganization, reclassification due to a change in duties, or the need to make room for an employee with reemployment or restoration rights. Involves separating an employee from his or her present position, but does not necessarily result in separation or downgrading.

Non-disability Retirement - Claim to entitlement of an annuity under the Civil Service Retirement System.

Unavailable - Those appeals which the Case Tracking System did not assign to specific agencies because of insufficient data entries.

Additional Terms as Used in this Report

Adjudicate - To settle judicially.

Affirmed - A closing action whereby the Regional Office decided an agency personnel action is found to be correct, or the Board decided a Regional Office decision is correct.

Denied - A decision by the Board not to reopen a case.

Employee - Although the vast majority of appeals and PFR's are filed by current employees, the word "employee" as used in this report includes some appeals that are filed by applicants for employment (suitability cases), former employees (retirement cases), and, sometimes, relatives of employees (usually legal retirement cases).

Granted - A decision by the Board to reopen a case.

Decided on the Merits - Cases which the Regional Offices determined met the Board's jurisdictional and timeliness requirements and which were affirmed, mitigated, remanded, or reversed. For the purposes of this report, rejected cases are not included in this category.

Mitigated - Cases in which the severity of the penalty of an agency's personnel action was reduced.

Overturned - At the Board level, a Regional Office decision is overturned when the Board grants a Petition for Review and subsequently reverses, remands, mitigates, or vacates the Regional Office Decision.

Petition for Review (PFR) - A request for Board reconsideration of a Regional Office decision.

Presiding Official - A lawyer employed by the MSPB who adjudicates cases.

Prevail - At the Board level, an employee is said to prevail when any of the following possible results occur: the Board decided not to grant a Petition for Review filed by an agency, thereby letting a pro-employee Regional Office decision stand; regarding a PFR filed by an agency and granted by the Board, the Board nevertheless decided not to overturn the decision of the Regional Office; or, regarding a PFR filed by an employee and granted by the Board, the Board decided to overturn the Regional Office decision. At the Board level, an agency is said to prevail when any of the following results occur: the Board decided not to grant a PFR filed by an employee, thereby letting a Regional Office decision in favor of the agency stand; regarding a PFR filed by an employee and granted by the Board, the Board nevertheless decided not to overturn the Regional Office decision; or, regarding a PFR filed by an agency and granted by the Board, the Board decided to overturn the Regional Office decision.

Rejected - Cases which the Regional Offices determined did not meet the Board's jurisdictional, timeliness, or other requirements.

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Remanded - Cases which the Regional Offices returned to an agency for further processing, or which the Board returned to a Regional Office for further processing.

Reversed - A closing action whereby the Regional Office decided an agency personnel action was incorrect, or the Board decided a Regional Office decision was incorrect.

Vacated - A closing action by the Board which nullifies a Regional Office decision.

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APPENDIX 6

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OFFICE OF MERIT SYSTEMS REVIEW AND STUDIES

BIBLIOGRAPHY OF REPORTS

Under the mandate of the Civil Service Reform Act of 1978, the Merit Systems Protection Board (MSPB) shall:

> conduct . . . special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.
>
> (5 U.S.C. 1205(a)(3))

The Office of Merit Systems Review and Studies (MSRS) of the MSPB is responsible for determining whether the merit principles established by law (5 U.S.C. 2301) are being effectively implemented, and whether prohibited personnel practices (5 U.S.C. 2302) are being avoided in Federal agencies. MSRS studies the rules, regulations, and significant actions of the Office of Personnel Management (OPM) and evaluates the health of the Federal civil service system through a variety of techniques. Among these are surveys, agency specific case studies, onsite interviews, roundtable discussions, and traditional investigative techniques. Research topics are selected to produce studies that are bias-free, definitive and reliable indicators of civil service problems, and which identify ways in which these problems can be addressed. A bibliography of all published MSRS reports in chronological order is given below.

Sexual Harassment in the Federal Workplace: Is it a Problem?, March 1981.

In response to a Congressional request, the Board explored the nature and extent of sexual harassment in Federal Government. Survey data for this study were based on the responses of over 20,000 men and women in the Federal work force. This report covers the following topics: the view of Federal workers toward sexual harassment, the extent of sexual harassment in the Federal Government, the characteristics of the victims and the perpetrators, incidents of sexual harassment, its impact and costs, and possible remedies and their effectiveness.

Do Federal Employees Face Reprisal for Reporting Fraud, Waste, or Mismanagement? Preliminary Report, April 1981.

This is the preliminary report on "whistleblowing" and the Federal employee. Survey data for this study were gathered from 8,600 Federal employees in all grade levels from 15 agencies. This study reports on a number of issues including: the number of observations of illegal or wasteful activities that go unreported and the outcome when they are reported.

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Study of MSPB Appeals Decisions for FY 1980, May 1981.

One of the principal functions of the Merit Systems Protection Board is to hear the appeals of Federal employees from one or another of various types of personnel actions taken or denied by Government agencies. This is the first annual report on MSPB appeals decisions. This report analyzes the Board's processing of the appeals during FY 1980 and places the results in historical context.

Status Report on Performance Appraisal and Merit Pay Among Mid-level Employees, June 1981.

This study focused on the experiences of midlevel employees in the first eight agencies that implemented Merit Pay in October 1980. The data were drawn from a survey of approximately 3,000 employees in grades GS/13-15. The study examines employee perceptions of their performance standards and the performance appraisal system, especially as it relates to improved performance, and their opinions on the fairness of the Merit Pay System.

Report on the Significant Actions of the Office of Personnel Management During 1980, June 1981.

The Civil Service Reform Act of 1978 mandated that the Merit Systems Protection Board monitor the significant actions of the Office of Personnel Management and report to the President and the Congress on the rectitude of those actions. This was the first such report on OPM and data were derived from a survey of more than 1,200 senior personnel officials and interviews with Directors of Personnel of all cabinet and military departments. Issues covered included a discussion of: what OPM did to promote the merit principles and prevent the commission of prohibited personnel practices, OPM's delegated and decentralized authority, and safeguards and programs set up for the Senior Executive Service.

A Report on the Senior Executive Service, September 1981.

This study was undertaken to determine whether the Senior Executive Service is providing the flexibility needed by management to recruit and retain the qualified executives needed to manage Federal agencies more effectively. Data for this report were derived from survey responses from approximately 1,000 senior executives and an indepth phone survey of 100 additional SES'ers. The report covers many topics including: the impact of the bonus restrictions, the ceiling on executive pay, and politicization of the SES.

Whistleblowing and the Federal Employee: Blowing the Whistle on Fraud, Waste and Mismanagement - Who Does It and What Happens, October 1981.

This is the final report on "whistleblowing" and the reprisals that are sometimes taken against those who report an incidence of fraud, waste, or abuse. Survey data were gathered from approximately 8,600 Federal employees in 15 agencies. The report covers a wide range of issues including: the number of employees who observed one or more instances of illegal activities, reasons given for not reporting these activities, and what happens to employees who do report illegal or wasteful activities.

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Breaking Trust: Prohibited Personnel Practices in the Federal Service, Director's Monograph, February 1982.

This monograph reports on prohibited personnel practices as experienced by several key groups of Federal employees. The survey data were drawn from a random selection of 1,000 senior executives, 3,000 midlevel employees, 1,200 senior personnel officials, as well as 8,600 employees in all grade levels. Among other things, the report describes: the Governmentwide incidences of prohibited personnel practices and the incidences of such practices in individual agencies.

The Other Side of the Merit Coin: Removals for Incompetence in the Federal Service, Director's Monograph, February 1982.

This monograph explores the question of whether Federal employees who cannot or will not improve their inadequate performance are being separated from their positions. Data for this report were drawn from the following: OPM's Central Personnel Data File, and MSPB's questionnaire surveys of 1,000 senior executives, 1,200 senior personnel officials, and 3,000 midlevel employees. The report discussed employees' expectations of removals based on poor performance and noted that the expectation of removal varies among Governmentwide populations.

The Elusive Bottom Line: Productivity in the Federal Workforce, Director's Monograph, May 1982.

This monograph examines how well the merit system principle calling for an efficient and effective work force is being realized. Survey data were gathered from randomly selected Federal employees, including 1,000 senior executives and 3,000 midlevel employees. This study reports on employees' perceptions of their overall productivity, whether the amount of work could be increased, and whether the quality of their work could be improved.

Study of MSPB Appeals Decisions for FY 1981, December 1982.

This is the second annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1981 and places the results in historical context.

Report on the Significant Actions of the Office of Personnel Management for [illegible] 1981, December 1982.

This is the second annual report on significant actions of the Office of Personnel Management. Data for this report were derived from the comments solicited from organizations and individuals with a specific interest in the Federal personnel system, including onsite interviews with directors of personnel and other senior executives. Among other topics, this study discussed the implementation of merit pay, problems in recruiting and keeping executive talent, and the morale of the Federal work force.

Reduction-in-Force in the Federal Government, 1981: What Happened and Implications for Improvement, June 1983.

This study reviewed employee perceptions of the 1981 reduction-in-force (RIF) practices to determine if the RIF's were conducted in accordance with the merit principles and with the avoidance of prohibited personnel practices. The data for this study were based on on-site interviews with those knowledgeable about the RIF process and Governmentwide surveys of 2,600 Federal employees and 800 senior Federal personnel officials. Some of the topics covered in this report include: The extent to which the 1981 RIF complied with the RIF regulations promulgated by OPM and the agencies, the extent to which the 1981 RIF affected the efficiency and effectiveness of the work force, and ways in which the RIF system could be improved in the future.

Study of MSPB Appeals Decisions for FY 1982, December 1983.

This is the third annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1982 and places the results in historical context.

The RIF System in the Federal Government: Is It Working and What Can be Done to Improve It, December 1983.

As a result of much discussion about reductions in force during the summer of 1983 and OPM's proposed revisions to the RIF regulations, the Merit Systems Protection Board sponsored a roundtable to provide a forum for policymakers and other interested parties to discuss RIF issues and their effect on the merit system. This monograph is a summary of the roundtable proceedings including the Board members' presentations and the question and answer session between the audience and panel members.

Report on the Significant Actions of the Office of Personnel Management During 1983, December 1983.

This is the third annual report on significant actions of the Office of Personnel Management. Information for this report was derived from several sources: Written comments in response to information requests sent to the 20 largest Federal departments and independent agencies, responses of 4,900 Federal employees to the Governmentwide Merit Principles Survey, statements of OPM and Federal employee union officials at a MSPB sponsored roundtable, and recent studies prepared by General Accounting Office, Office of Personnel Management, and other public and private research organizations.

Significant Actions of the Office of Personnel Management: A Labor-Management Perspective, August 1984.

This monograph is a summary of a roundtable discussion sponsored by MSPB on November 3, 1983. OPM officials and officials from the National Treasury Employees Union and the National Federation of Federal Employees served as panelists and responded to questions asking them to identify the three most significant accomplishments by OPM in 1982 and 1983, the three priority actions OPM should undertake, and the three priority actions Congress should take to improve the merit system. The discussion by panelists and members of the

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Federal personnel community who were invited to participate expanded upon: Determining the role of OPM in maintaining an effective merit system, adapting private sector principles to the public sector, creating and conducting performance appraisals, attracting and retaining a quality work force, and providing incentives to perform.

Blowing the Whistle in the Federal Government: A Comparative Analysis of 1980 and 1983 Survey Findings, October 1984.

This is the second full report on the subject of "whistleblowing" issued by the Board. It discusses the results of a 1983 survey and compares those results with similar data obtained in an earlier (1980) Board survey. The report, therefore, also provides longitudinal data that tracks over time Federal employee attitudes and self-reported experiences relative to the issue of employee disclosure of information about illegal or wasteful activities. Specific comparisons include the percentage of Federal employees who claim recent knowledge of fraud, waste, or abuse; what knowledgeable employees do with such information and why; and what happens to employees who do report an illegal or wasteful activity.

The 1984 Report on the Senior Executive Service, December 1984.

This is the second Board report on the state of the Senior Executive Service. The data in this study were based on surveys of over 1,200 current and over 800 former senior executives. This study reports on attracting and retaining highly competent executives, the executive performance appraisal system, the incidence of arbitrary actions and prohibited personnel practices in the executive ranks and the achievement of the SES mandated goals.

Report on the Significant Actions of the Office of Personnel Management During 1983, December 1984.

This is the fourth annual report on the significant actions of the Office of Personnel Management (OPM). Information in this report was derived from several sources: written comments in response to information requests sent to the 20 largest Federal departments and agencies; responses from employees to the Merit Systems Protection Board's Governmentwide Merit Principles Survey, and OPM's Federal Employee Attitude Survey III; recent studies prepared by the General Accounting Office and the Grace Commission, as well as other public and private research organizations. Issues covered in this report include: pay and performance, the Senior Executive Service, staffing and recruitment and OPM's personnel management evaluations.

Study of MSPB Appeals Decisions for FY 1983, September 1985.

This is the fourth annual report on MSPB appeals decisions. This report analyzes the Board's decisions on the appeals during FY 1983 and places the results in historical context.

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PROHIBITED PERSONNEL PRACTICES

The Civil Service Reform Act (Pub. L. No. 95-454, 92 Stat. 111 (1978)) forbids personnel actions based on the following eleven practices:

1) Discrimination based on race, color, religion, sex, age, national origin, handicapping condition, marital status or political affiliation;

2) Soliciting or considering employment recommendations not based on the individual's work performance, ability, aptitude, general qualifications, suitability, character, or loyalty;

3) Coercing the political activity of any person;

4) Deceiving or willfully obstructing anyone from competing for employment;

5) Influencing anyone to withdraw from competition for any position, either to help or hurt anyone else's employment prospects;

6) Giving unauthorized preferential treatment to any employee or applicant;

7) Nepotism;

8) Taking or failing to take a personnel action as a reprisal against a whistleblower;

9) Taking or failing to take a personnel action as a reprisal for the exercise of any appeal right;

10) Discriminating on the basis of personal conduct which does not adversely affect the performance of any employee or applicant or the performance of others, except in case of criminal conviction for the conduct; and

11) Taking or failing to take any other personnel action if that would violate any law, rule, or regulation implementing or directly concerning these merit system principles.

For original text see 5 U.S.C. 2302(b).

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